

*Rehuff the  
Mandy  
Myle  
Bilbrough J. A.*

SOUTHAMPTON  
UNIVERSITY  
Parliamentary  
Papers  
Library

MINISTRY OF TRANSPORT.

---

RATES ADVISORY COMMITTEE.

---

GENERAL REVISION  
OF  
RAILWAY RATES AND CHARGES.

---

PROCEEDINGS OF MEETING

HELD ON

20TH MAY, 1920.

---

SIXTH DAY.

---



LONDON:  
PRINTED AND PUBLISHED BY  
HIS MAJESTY'S STATIONERY OFFICE.

To be purchased through any Bookseller or directly from  
H.M. STATIONERY OFFICE at the following addresses:  
IMPERIAL HOUSE, KINGSWAY, LONDON, W.C.2. and 28, ADELPHI STREET, LONDON, S.W.1;  
37, PETER STREET, MANCHESTER; 1, ST. ANDREW'S CRESCENT, CARDIFF;  
23, FORTH STREET, EDINBURGH;  
or from E. PONSONBY, LTD., 116, GRAFTON STREET, DUBLIN.

1920.

Price 1s. 6d. Net.

MINISTRY OF TRANSPORT.

---

GENERAL REVISION OF RAILWAY RATES, TOLLS AND CHARGES.

---

OLD HALL, LINCOLN'S INN, W.C.2.

Tuesday, 11th May, 1920.

*Terms of Reference:—*

"The Minister having determined that a complete revision of the rates, fares, dues, tolls and other charges on the railways of the United Kingdom is necessary, the Committee are desired to advise and report at the earliest practicable date as to:—

- "(1) The principles which should govern the fixing of tolls, rates and charges for the carriage of merchandise by freight and passenger train and for other services.
  - "(2) The classification of merchandise traffic, and the particular rates, charges and tolls to be charged thereon and for the services rendered by the Railways.
  - "(3) The rates and charges to be charged for parcels, perishable merchandise and other traffic conveyed by passenger train, or similar service, including special services in connection with such traffic."
- 

The evidence is issued in uncorrected form, and any inaccuracies should be notified to the Secretary, Rates Advisory Committee, Ministry of Transport, Gwydyr House, Whitehall, S.W.1.

MINISTRY OF TRANSPORT.

---

RATES ADVISORY COMMITTEE.

---

GENERAL REVISION OF RATES AND RAILWAY CHARGES.

---

PROCEEDINGS OF MEETING

HELD ON

20TH MAY, 1920.

---

PRESENT :—

F. GORE-BROWNE, Esq., K.C. (*Chairman*).  
SIR WALTER W. BERRY, K.B.E.  
W. J. DAVIS, Esq.  
W. A. JEPSON, Esq.  
L. A. MARTIN, Esq.  
W. M. ACWORTH, Esq.  
S. J. PAGE, Esq. (*Secretary*).

---

SIXTH DAY.

---

MR. J. H. BALFOUR BROWNE, K.C., appeared for The Federation of British Industries.

SIR JOHN SIMON, K.C., SIR LYNDEN MACASSEY, K.C., MR. BARRINGTON WARD, K.C., and MR. BRUCE THOMAS appeared for the Railway Companies' Association.

MR. ROWLAND WHITEHEAD, K.C., and MR. G. W. BAILEY appeared for the St. Helens and Widnes Manufacturers and Traders.

MR. ROWLAND WHITEHEAD, K.C., and MR. EDWIN CLEMENTS appeared for the Iron and Steel Federation.

MR. G. H. HEAD appeared for the Livestock Traders' Association (instructed by Messrs. Maxwell, Brownjohn & Co.).

MR. JACQUES ABADY (instructed by Sir Thomas Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

SIR ROBERT ASKE (instructed by Messrs. Botterell & Roche and Hill Dickinson & Co.) appeared for the Chamber of Shipping of the United Kingdom and Liverpool Steamship Owners' Association.

SIR THOMAS RATCLIFFE-ELLIS, called.

Examined by MR. ABADY.

1826. *Mr. Abady*: I think that it will probably save time if you will be good enough to read the *précis* of evidence which you have prepared?—Yes. I am a Solicitor and act as Law Clerk and Secretary to the Mining Association of Great Britain. The Association is a federation of local Associations. There exist in each mining district of England, Scotland and Wales local Associations of Coal Owners, and they are all federated in the Mining Association of Great Britain. The Association has just held its 66th Annual Meeting. The work of the Association is under the direction of an Executive Council, consisting of representatives of the different districts, which has power to delegate to a Central Committee, again consisting of representatives of the several districts, any of its powers; and also there are Committees *ad hoc* appointed from time to time to deal with any question requiring attention. The questions which have been submitted for replies have been considered by the Mining Association, and I desire to refer to some only of the replies which have been made to those questions by the Mining Association. The others, I hope, explain themselves. The interests

of the Association are mainly the carriage of fuel. 1. With reference to answer 1 (a), that maxima should be fixed by the same procedure as in the past subject to the same restrictions on increases within the maxima as at present; the Mining Association is strongly of opinion that there should be a maximum fixed as in the past. The establishment of a maximum it is believed would tend to secure the best and the most economical management and working of the Railways by the Railway Companies, or those in charge of them. The knowledge that they could not exceed the maximum rate would, it is suggested, be more likely to have this result than if they had no maximum, but some "reasonable sum" which might be an alterable one, in a much easier method than would apply to a maximum.

1827. *Chairman*: When you say that a maximum should be fixed by the same procedure as in the past you mean by Act of Parliament?—Yes. If I may read the next few paragraphs of my proof I should then like to add something to it. In deciding upon the classification, it is suggested that a working rate and a maximum would be fixed, and both would be

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

considered in the classification inquiry. In considering the classification, I suggest that coal is an exceptionable commodity; it is the foundation upon which other industries rest, and it should be the subject of a class itself and be at the lowest rate. It is said that to fix a maximum at the present time, when labour and materials are, it is hoped, at their highest point, would necessarily mean that the maximum would be a high one, but the Mining Association is prepared to risk this, provided—and circumstances make this provision very necessary—that the provisions of the Act of 1894, which require a railway company to justify an increase of a working rate, although within the maximum, should be continued with some modification. I want to say here that that does not quite accurately express the views of the Mining Association. We recognise that at the present time it would be impossible to fix a maximum; and, so long as there is a Minister who can fix a rate at any figure that he thinks fit, it is useless to talk at the present time of fixing a maximum. But what we ask is this. It is hoped that the present state of things will not be permanent and that in time the railway companies will more or less come into their own again. And we think that the Act of Parliament which is to be passed will provide not merely for the exceptional conditions existing at present, but for the future, and that in that Act there should be a clause inserted similar to Section 24 in the Act of 1888—namely, that the railway companies should put forward a scale of maximum charges and that scale should be subject to discussion, not, I should hope, at the same length as formerly, but the opportunity for discussion as was given in fixing the maximum rates after the Act of 1888. We think that that should be a cardinal point in "new structure"—that the railway companies should be required to fix a maximum rate. With reference to the time when that should be done it is impossible, of course, for me to offer any opinion, but I think that the Act should provide that some time should be fixed, as it was in the former Act, or it might be that the time might be fixed by a Departmental Regulation, either of the Transport Authority or of the Board of Trade.

1822. Then what would you do with regard to the standard rates to be charged in the meantime?—I think that a working rate should be fixed; and I presume that this Committee will advise the Minister as to what that should be, and that that should be the working rate.

1829. *Mr. Abdy*: That would be the second part of the Reference to this Committee?—Yes, that would be considered part of the classification inquiry, I understand.

1830. *Chairman*: Then, as I understand it, your recommendation is that for the present we should not deal with maxima?—For the present you cannot deal with maxima, I think. I believe the conditions are such as to make it difficult, if not impossible, to fix maxima which would be just either to the traders or to the railway companies.

1831. And then that while postponing that, this Committee should recommend to the Minister a working scale which would be put into the Act of Parliament, based, of course, upon existing circumstances. Then what is your proposal with regard to varying that scale upwards or downwards if circumstances change?—I deal with that, I think, in the next paragraph of my proof.

1832. *Mr. Jepson*: I want to ask you something before you get to the question of the Tribunal. Have you any suggestion to make as regards the principle upon which you suggest these working rates should be fixed?—I cannot suggest any detail, but a poor railway company is no use whatever to the traders. I think that in fixing these working rates regard should be had to giving the railway company a fair return for the work it does.

1833. I rather wanted to lead you to this, as to whether you thought it was practicable to have a uniform scale for the charging of coal traffic through-

out the country. I think you are aware that at the present time the charges for the conveyance of coal traffic vary very considerably in the various districts, and that as the result of the passing of the Rates and Charges (Orders) Acts of 1891 and 1892 the maximum actually cut the existing rates, and in a very large number of cases the actual rates were brought down to the few maxima?—I deal with that later in my proof under the heading of "Exceptional Rates."

1834. Would you tell me whether you think it is practicable to have a uniform mileage scale applicable to all districts in the country?—It would be an exceedingly convenient arrangement, but I am not quite sure that it would be altogether practicable. If you will allow me when I deal with exceptional rates, perhaps you will refer to that point again.

1835. *Mr. Acworth*: Before you leave this matter, I gather that you wish that the provisions of the Act of 1894, requiring a railway company to justify an increase of a working rate within the maximum, should be continued?—In the next paragraph of my proof I deal with that. It may be necessary in certain cases that the operative rate should be less than the statutory working rate, but the difficulty railways have in giving this is that they cannot increase it without the onus of justifying the increase. It may be desirable for the railway companies to have the right, having reduced the rate, to restore it to the amount from which it was reduced without justification, but giving the trader the right to object if he could prove (the onus of proof being upon him), that the increase was unreasonable.

1836. Then, in other words, with that modification, you wish to keep the check of the Act of 1894 in existence?—Section 24 of the Act of 1894 we want to keep in existence.

1837. *Mr. Abdy*: You mean Section 1?—Yes; I beg your pardon.

1838. *Mr. Acworth*: You want to keep that in existence?—Yes.

1839. Do you propose to give the railway companies full powers to change their rates without asking any consent?—No. The working rate, I understand, would be fixed by the Minister on the recommendation of this Committee.

1840. Then you would not allow the railway company to change their rate upwards or downwards?—Yes; I should allow them to reduce it.

1841. But you would keep something like the present restriction upon increase?—Well, in a Departmental Committee of the Board of Trade which sat in 1908 (I think it was) that question was considered, and with my proof you will find a memorandum of what was decided then upon that.

1842. I only wanted to know what you recommend now—let us leave the past. That is what you desire now?—Yes. I desire that if they want to reduce the working rate they may be at liberty to do so. Of course, the question of undue preference might arise there; but if it were in the public interest probably that might be an answer to it. And that if they desire to restore it to the original working rate they should be entitled to do so without justification. But the trader should be entitled to say whether that is unreasonable—the onus should be upon him—but if they were going to increase this working rate to something under the maximum but in addition to what the working rate was, they should be required to justify that as provided in the Act of 1888.

1843. *Chairman*: If the rate is fixed by a Tribunal, and if the railway companies can only get an increase upon that rate after satisfying an independent tribunal that it is reasonable and fair, what grounds do you give for maintaining the maximum?—The ground I have given already is this: That I think the effect of the maximum is to make the railway companies (so to speak) cut their coat in accordance with the cloth they have got, and that it would have an effect in securing economical working. If there is no maximum then I think they are entirely unlimited.

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

1844. The tribunal would not give them an increase of rates if it were not satisfied that they were working to the best of their ability economically?—That is true. But I think we are safer with some point beyond which they cannot go without the sanction of a higher authority than the tribunal fixing the rates. I now go on to speak with regard to the tribunal: the Mining Association strongly object to the suggestion that a non-judicial tribunal should supersede the functions of the Railway and Canal Commission. I propose later to offer some suggestions for an alteration in the constitution of that judicial tribunal, but I respectfully suggest that the Committee is not yet in possession of any detailed proposal as to the composition and functions of the suggested non-judicial tribunal. In the replies to the questionnaire made by the Federation of British Industries, on page 15 of the replies, it is said "a new tribunal should be established upon which traders shall have proper representation. This tribunal should form an inexpensive Court of Appeal in all questions of rates, rebates, claims, accommodation, facilities, etc." In Mr. Balfour Browne's address, on page 15 of the Notes of 11th May, he said the tribunal should be a business tribunal, with representatives of railways and of the business or trading interest in the country, and on page 4 of the Notes of 12th May, after commending the personnel of the Railway and Canal Commission, he says: "It is because it consists of lawyers, and mainly, because it is a very expensive tribunal to go before—those are my objections," and on page 9 of the same report Mr. Balfour Browne indicates, a little more precisely, the constitution of this tribunal. He says: "I have suggested two railway men, two traders, and an impartial chairman." Mr. Marshall Stevens does not throw much more light upon what this business tribunal is to be. In answer to question 521, "Is it your view that this tribunal should be a business tribunal, with representatives of railways and of the business or trading interest in the country, rather than a legal tribunal?" he replied: "Certainly, they are dealing entirely with commercial questions." I again suggest that the Committee has really no information before it which would enable them to decide as to the exact character of the business tribunal. Is it to sit permanently, how are the business men to be appointed, and by whom appointed; is the impartial Chairman to be a lawyer? If not, are they to have any legal advice, and, if so, from whom? Are they to be paid, and, if so, at what rate? In fact, the mere suggestion that it should be a business tribunal does not give any such complete information to enable a judgment to be formed as to how far it would be of greater advantage to the traders than the present judicial tribunal, the Court of the Railway and Canal Commission. Mr. Balfour Browne's objection is not that the present tribunal is not impartial—he objects to it because there are lawyers on it, but his main objection is that it is very expensive. I respectfully submit to the Committee that it has no information before it as to what would be the expense of a business tribunal. The expenses before the Railway and Canal Commission are not of the Court itself, but those incurred by the assistance of the members of my profession and of the higher branch—Counsel—of evidence and the like. I have not learned in the course of this enquiry as to what is to be the procedure before the business tribunal; but if they are to decide questions submitted to them in the absence of legal argument or evidence, and merely from their innate knowledge of commercial matters, then I suggest it is not a desirable, and may be a very dangerous, tribunal. If they are to hear Counsel and evidence, I cannot see in what way the cost is to be much reduced as compared with the present tribunal. I should fear myself that such a tribunal as suggested might be open to several objections. Business men would, I presume, be persons engaged in trade, and have their own difficulties with railway companies, and their own opinions as to what should be done by railway companies; and however

desirous they might be, in considering matters brought before them, to exclude their own personal views and considerations, I doubt if those who have to come before that tribunal would be always satisfied that its members successfully accomplished that not too easy task. A very significant remark was made by Major-General Sidney Golden Leng at the conclusion of his evidence. On page 30 of the 12th day's proceedings he said, "After all, I am suggesting that that tribunal, without wishing to cast any aspersions upon them, are all human, and the tribunal might have very very great political pressure brought to bear on them." In 1908 a Conference sat at the Board of Trade for some months considering railway matters and, amongst others, the procedure of the Court of the Railway and Canal Commission, and in the Report of that Conference a suggestion was made for its amendment. I invite this Committee to consider it, and I suggest with very great respect that a judicial tribunal with procedure constituted in the way recommended would secure every possible protection to the Traders and also to the railway companies. I have attached to my proof an extract which is as follows:—Extract from Report of Board of Trade Railway Conference, 1908-9. Procedure for cases which the Railway and Canal Commissioners have power to determine on complaint being made by a trader under the Railway and Canal Traffic Acts:—(1) Notice of claim to be sent to the Railway and Canal Commission. (2) Unless otherwise agreed, the parties to attend before the Registrar for the purpose of settling procedure. (3) The parties may agree that the case shall be heard (a) by the Registrar, (b) by the Registrar with assessors, or (c) by the Commissioners. Where the tribunal is not agreed upon by the parties the Registrar to determine whether the dispute shall be referred to (2), (3), or (c). (4) The parties may also agree that in cases (a) and (b) the decision shall be final, and in that event the decision shall not be open to review on any ground for a period of three years. In default of agreement:—(i.) Any decision come to before the Registrar sitting with or without assessors to be subject to appeal in the Court of the Railway and Canal Commission. (ii.) The costs of the appeal to be paid by the party applying for it if the decision of the Registrar is confirmed. (5) In proceedings before the Registrar, whether with or without assessors, the parties may appear in person or by their solicitor or counsel. Only one counsel or solicitor to be heard on behalf of each party to the dispute. Commercial Court practice to be followed. (6) The Registrar to have power to refer the case, or any question arising therein, to the Commissioners at any stage of the proceedings. (7) When the Registrar sits with assessors, two assessors to sit unless otherwise ordered. Such assessors to be appointed by the parties, one by the complainant and the other by the defendant. No barrister or solicitor to be nominated as an assessor. (8) In the case of complaint of an increase of rate, or an application for through rates, it shall no longer be a necessary preliminary to a complaint to make any application to the Board of Trade under Section 31 of the Railway and Canal Traffic Act, 1888, it being understood, however, that this procedure before the Board of Trade shall always be available if desired. I now return to my proof: The association with the Registrar of Assessors, who would be business men, one appointed by each of the parties (and the only persons excepted from such appointments, perhaps properly, are lawyers, solicitors and barristers) would secure, at any rate, that there was only one lawyer on the Tribunal—the Judge—and two who were not lawyers. I invite the Committee to consider two matters by which such a scheme might be altered: (1) That all matters should in the first instance be made to the Board of Trade and not to the Registrar. That the present conciliatory jurisdiction of the Board of Trade should be continued, and the Board of Trade, failing settlement of the matter, decide, in the event

20 May 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

of the parties being unable to agree, to which of the three tribunals the matter should be referred—Registrar, Registrar with Assessors, the Commissioners. I respectfully suggest that having regard to the existence of the conciliation machinery of the Board of Trade for so many years useful information as to its working and the results effected through its employment might be laid before this Committee by the evidence of a Board of Trade official. In 1911 there was a Departmental Committee which sat and they considered that scheme. On page 25 of Cd. 5631, paragraphs 100, 101 and 102, they make their comment upon that procedure and it is as follows:—"The evidence showed a lack of appreciation on the part of many witnesses of their rights as traders and of the remedies available to them. Under the existing law complaints of unreasonable increases in rates or lack of reasonable facilities fall to be decided by the Court of the Railway and Canal Commission. The amended law which we suggest would naturally be administered by this tribunal also. Dissatisfaction with this Court and its procedure has been expressed by some of the witnesses appearing before us, this dissatisfaction being based mainly on the expense involved in prosecuting cases. But the importance of the issues which are generally, either directly or indirectly, involved tends to make the expense of the cases which are tried considerable. It is remarkable that the protection of the existing Court has rarely been sought by any traders except those whose business was of an extensive kind. We observe, however, that the Board of Trade Railway Conference have suggested that a simplified and cheapened procedure before the Registrar might be adopted in the less important cases. We agree with that suggestion, but think that some further modifications should be considered in the interest of small traders. For example, it might be advisable to provide that all cases where the amount in dispute is under a certain fixed sum should go before the Registrar, who, however, should be given discretion to refer any particular case to the Commissioners for trial, and that there should be no appeal from the Registrar, without leave, the Registrar being empowered to impose on the appellant terms as to costs or otherwise at his discretion."

1845. *Chairman*: There is a little difficulty about fixing the rate; the matter of a 1d. rate—?—There is a difficulty, because in coal traffic a 3d. rate might make an enormous difference. It is difficult to say what may be an important question and what may not. Paragraphs 101 and 102 of Cd. 5631 are as follows: "101. But there are many grievances against railway companies which become acute through misunderstanding and want of closer relations between them and traders, and some of them are capable of being remedied or explained by friendly discussion, the expense and irritation of legal proceedings thus being avoided. The railway companies say they recognise this (Owens, 12,872); nevertheless, an impression that railway companies are unapproachable remains. The informal discussion of grievances before the Board of Trade, in accordance with the provisions of Section 31 of the Railway and Canal Traffic Act, 1888, is a method of conciliation which has accomplished much good; 1,577 complaints have been dealt with by the Board of Trade under this procedure between 1889 and 1907, and in 1,000 instances settlements more or less to the satisfaction of the complainants have been obtained or the explanations of the railway companies have been accepted (Owens, 12,831). We understand that no representation with regard to the conditions or charges relating to goods traffic made to the Board of Trade under these provisions is rejected by them on the ground that it does not fall within the scope of the section. It would, however, we think, be useful if it were understood that questions might be raised under this procedure before the actual occurrence of a dispute, and it might, perhaps, be well that this should be made clear. 102. We also think that railway companies might be encouraged to deal locally

with complaints to a greater extent than is now done, and would point out that advisory councils seemed to have fulfilled useful functions in Germany. We do not suggest that advisory councils should be established by law, as their utility might be imperilled if the companies were forced to accept them against their will. It is noteworthy that the system was instituted in Germany by the voluntary action of the railway administrations, and in some cases is still carried on without any legal compulsion." That is a pronouncement by this Departmental Committee of 1911; and the Committee consisted of Mr. Russell, Res., M.P. (Chairman), Mr. James Samuel Meale, The Lord Robert Cecil, M.P., Mr. William Temple Franks, The Lord Hamilton of Dalzell, C.V.O., Sir Maurice Levy, M.P., Mr. Ernest Moon, K.C., The Lord Newton, Mr. George Henry Roberts, M.P., and Mr. Alexander Siemens.

1846. *Mr. Martin*: Would not the suggested Local Advisory Committees meet a great deal of that difficulty with regard to small traders?—I dare say they would; and in the Transport Act there is a provision for it now. Will you refer to Section 19 of that Act.

1847. *Mr. Abady*: It is Section 19, paragraph (b)?—Yes. This is an amendment to the Court of the Railway and Canal Commission suggested in the Act.

"(b) The Commission may hold a local inquiry for the purposes of this section by any one of their members, or by any officer of the Commission or other person whom they may direct to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888, except the provisions relating to appeals, shall, so far as applicable, apply to such inquiries, and any officer or person directed to hold an inquiry shall have power to administer oaths and shall report the result of the inquiry to the Commission."

1848. *Mr. Acworth*: It is one special point with reference to this section?—Yes. The section begins: "The provisions of the Railway and Canal Traffic Act, 1888, as amended by any subsequent enactment, relating to the procedure for the determination of questions by the Commission under that Act including the provisions relating to appeals, shall apply to the determination of questions referred to the Commission under this Act, as if they were herein re-enacted and in terms made applicable to this Act." Under this Act—I think I am speaking correctly—the question of the reasonableness of rates is, of course, left entirely in the hands of the Minister of Transport; but upon questions of undue preference, or undue advantage, I think the Railway Commissioners' Court is preserved; a trader is entitled to go to the Court on those particular questions; but I am pointing out that it contemplated, not in an ancient Act but in an Act passed in the year 1919, that the jurisdiction of the Railway Commission might be usefully extended by having power to hold local inquiries.

1849. *Mr. Martin*: My point was that the Local Advisory Committee that is suggested by the traders, I think, means a local application to the local tribunal without any of that "red tape" (shall I say?) to go through before you get to that tribunal?—Why cannot that be done now? I do not know that there is any reason why the railway companies should not meet traders or a group of traders.

1850. You would agree to that?—Not to be compulsory in any way.

1851. But you would agree that would be a satisfactory way of settling a great many small disputes?—I should agree to this extent, that there is nothing of which I know now to prevent traders or a group of traders discussing these questions with the railway companies.

1852. *Mr. Jepson*: As they do frequently?—Yes. It does not want any legislation to do that; that exists at the present time.

1853. *Chairman*: As I understand the evidence that has been given, the idea was to set up a Com-

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

mittee which would consist partly of traders and partly of railwaymen in the principal business centres, and that that Committee should act rather as a conciliation body than as a tribunal to decide?—I suggest the Board of Trade as the conciliation body. I do not know that it is very desirable to prevent conciliation by establishing tribunals. I think the parties should be encouraged to endeavour to settle these disputes themselves. I am speaking only from own experience in the coal trade.

1854. Yesterday we were given evidence about a number of complaints in regard to milk, and accidents that had happened to it on its journey. Each individual trader might not be prepared to bring up a question like that, but his Association (whatever it might be) might be very willing to talk it over with the railway companies; and if there were in existence an arrangement by which that could be done it might be much easier than if they had solemnly to call upon the railway companies to appoint a Committee and to receive them and discuss it?—I cannot say anything about milk; but, in speaking about coal, my view is that it is not necessary to establish any such tribunal. I think that there is sufficient opportunity for an association of milk dealers to see their railway companies and to talk the thing over; and I think the railway companies would probably be more disposed to talk it over in a friendly way than if they were under some sort of compulsion to meet a tribunal, whether they liked it or not.

1855. *Mr. Davis*: I understand you to say that the cases to be presented before a tribunal should be indirect—that is to say, to go to the Board of Trade first and then be referred by the Board of Trade to that tribunal?—Yes. I say that for this reason. I think that in this Report, from which I have given you an extract, it is suggested that they should be sent to the Registrar. Now, I am afraid that the Registrar might be rather “snowed under” by the numerous complaints; but the Board of Trade is the authority which Parliament has fixed for the purpose of supervising (shall I say?) the general trade of the country; and I think it is to the Board of Trade that the application should be made in the first instance.

1856. I suppose you are aware that when the change was made to the Labour Department, that before a matter was sent to arbitration before the Industrial Court there was long delay, even in replying on the part of the Labour Minister to such applications; there was a further long delay before it was submitted to the Industrial Court; and then there was a considerable time before the Court could hear the case. That is indirect application?—It is very likely. I do not really know what this business tribunal is to be; but an application would have to be made to someone, and if they are very numerous I suppose there would be some delay; but I cannot see why there should be a greater delay in the reply made by the Board of Trade to an application.

*Mr. Martin*: I admit that the conciliation clause for powers to go to the Board of Trade has been very useful in a great many cases; but it does take some time; and then the Board of Trade have no power at all except in conciliation, and it is entirely by agreement afterwards by the parties whether they come to terms or not. I think what the traders want is a more simple form of getting a decisive answer, if I may say so; that really when they have talked it over, in exactly the same way as under the conciliation clause, the findings of that Committee should have some weight with both the companies and the traders.

1857. *Mr. Aeworth*: You have referred quite frequently to the Board of Trade. Under the Transport Act of last year practically all the powers that the Board of Trade had under all the old Statutes have been transferred to the Ministry of Transport?—Not quite all.

1858. All with very trifling exceptions, as far as I know?—I will tell you what they are.

1859. There is a schedule, I think, is there not?—Yes. In the Order that was made after the passing of this Act the powers were transferred except Section 36 of the Railway Companies Act, 1867, which is an amendment of Section 86 of the Lands Clauses Acts, 1845; Sections 3, 7, 20, 25, and 31 of the Railway and Canal Traffic Act of 1888. Section 3 provides for the appointment of the Railway and Canal Commissioners.

1860. That goes to the Home Office?—Yes. Then Section 7 makes certain provisions.

1861. That is the obtaining of a certificate?—Yes. Section 20 gives the Commissioners power to make rules for their procedure.

1862. The railwaymen?—It excepts these from the transfer to the Transport Minister. Then Section 31 prescribes the procedure with respect to complaints to the Board of Trade of unreasonable charges by railway companies. Those still remain in the Board of Trade.

1863. *Mr. Abady*: You have missed out Section 25?—Section 25 contains the provisions as to through traffic. That remains still with the Board of Trade.

1864. You are reading from the Board of Trade Exceptions Order—the Order in Council—of September 22, 1919?—Yes. So that it does not take away all the powers of the Board of Trade. But, whether it did or not, I suggest they would be quite competent, if you thought it desirable, that the Board of Trade should be authorised to do what I am suggesting they should do; that is, receive the complaints, to receive the parties—

1865. *Mr. Aeworth*: I was not quite clear whether you were suggesting that some of the powers that had been transferred to the Minister of Transport should go back to the Board of Trade; because I thought (I may be wrong) that in some of the things you were saying you were suggesting that the Board of Trade should do this and the other, whereas the Act had transferred the power to the Minister of Transport?—I do not think that I want to re-transfer anything.

1866. That is what I want to get at?—But I want to provide an amendment. The suggestion that was made in the Conference of 1908-09 provided that the notice of the claim should be sent to the Railway and Canal Commission. Now, I think that it would be better that they should begin with the Board of Trade—the notice of claim should be sent there; then the second proceeding would be that the Board of Trade would notify the parties to meet them, and then they would see what the dispute was really about, and see how far it was a misunderstanding, or whether it could be explained away or settled. If it could not be settled, then that the Board of Trade should say that this must be decided by the Registrar of the Railway and Canal Commission alone; or—

1867. May I put the general point that is troubling me? As I understand the Transport Act, one idea was to transfer the control that had been given hitherto to the Board of Trade, broadly speaking to the Minister of Transport. Now you are proposing to bring back the Board of Trade to a considerable extent?—I am proposing to re-establish (so to speak) the Board of Trade. You see, if you have a complaint to make it is no use appealing from Caesar to Caesar; it is no use appealing to the Transport Minister against something he himself has done. Therefore I say that it should not be to the Transport Minister that I should apply if I have a grievance, but to someone else.

1868. *Chairman*: But you would not refer to the Registrar of the Commission to over-rule the action of the Transport Minister?—No; he could not do that.

1869. *Mr. Abady*: Is it not a fact that the powers which you suggest should be exercised by the Board of Trade in future have not been transferred to the Minister of Transport?—I have said so, that I am not re-transferring anything. I am giving the Board of Trade certain powers which they had before. I

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

want now to suggest some further alterations in the constitution of the Railway and Canal Commission. This procedure, as I say, was considered by the Departmental Committee that sat at the Board of Trade. I do not know whether you were a member of it in 1908, Mr. Acworth?

Mr. Acworth: No.

Witness: There it was considered at very great length. I remember we were sitting there for about 18 months discussing it. That was again, as I pointed out, confirmed in 1911 by another very important Departmental Committee, but I think there were some further alterations made, and they were these. The constitution of the Commission now is that one of the Commissioners is to be a railway man, and there is no provision as to what the other man is to be. If it be possible to define what a business man is—I confess I do not know—but if you could recommend some definition as to what a business man is to be—then I suggest you should make the other Commissioner a business man, so that you would be perfectly certain that, in the constitution of the Tribunal, you would not be over-weighted with lawyers, and that would meet Mr. Balfour Browne's objection; you would have two men on it who would be both business men—one a railway business man, and the other a business man who is not a railway man. I think that there should be no appeal against the decision of the Railway and Canal Commission Court. At the present time, there is an appeal upon a question of law, and that might be taken up to the House of Lords.

Sir Lynden Macnaghten: That is not so—only under certain circumstances—only if the English Court of Appeal and the Scottish Court of Appeal differ.

Witness: I suggest that there should be no appeal, but that the Court itself should be entitled to state a case, if they desire it, for the explanation of some abstruse question of law. They might be entitled, if they thought fit, to state a case on that.

1870. Chairman: I presume not with the usual consequences in case they refused?—No, I should not give the parties a right to it. I should make this a final tribunal. If the tribunal itself thought fit to state a case, then they should be at liberty to do so. If it is a business tribunal, and they are going to have a great number of cases brought before them, there are bound to be delays. If the business tribunal is to have the case argued out, and I do not think that the traders would be satisfied that the business tribunal should draw from their own knowledge, and their own information, and decide without counsel and without evidence, then I cannot see in what way that would be a cheaper tribunal than the Railway and Canal Commission. I don't think many of the smaller cases would get beyond the Board of Trade. Many of them would be settled and disposed of there. It is said a great many of these difficulties arise in consequence of misunderstandings. That will be decided by an official of the Board of Trade, who will remove all these misunderstandings. Then, having ascertained the character of the dispute, if the parties agreed themselves that it should go to the Registrar or to the Registrar with Assessors, or to the Commission Court, there is an end of it. If they did not agree, he would decide to which of those tribunals the dispute should be referred. I really fail to see myself, when you have got to your hand tribunals which are quite competent, I suggest, to deal with all these questions—it may be with some slight amendment—why you should seek to destroy them altogether—that is Bolshevism—and to start something entirely new, instead of trying to add some amendment to what you have already got, to make them suitable for your purpose. I have nothing more to say on that head.

1871. Chairman: If there are to be two tribunals, the Railway and Canal Commission, and a body representing traders and the railways, with an independent Chairman, if that is to be so, we have asked the parties to indicate which duty should go to the one body and which duty should go to the other. We

will not be deciding to-day whether it is to be the Railway and Canal Commission only, or the other tribunal only, or both, but perhaps the Mining Association would be good enough to give us an answer to that question when it is sent out at some time—suppose there are to be both bodies, which duty should go to the one body and which duty to the other body?—It is very difficult to settle that.

1872. I do not ask you for an answer now, as it is much too complicated, but we should be very glad if the Mining Association would help us there. Supposing we do decide that there should be two bodies, what is to be the allocation of duties to those bodies?—We shall do the best we can to assist you, but I see very great difficulties about that—in setting up some hypothetical cases and saying those should go to the one tribunal, and those should go to the other. I am rather afraid you could not decide which tribunal should deal with it until you knew what the dispute was, especially in the coal industry, where even a farthing a ton extra on the enormous traffic which is carried would mean a great amount of money.

1873. In my opinion, the amount might not be at all the guiding thing. You might submit the reasonableness of charge to one tribunal, and any question of undue preference to the other tribunal?—We will do the best we can to answer the question.

1874. Mr. Davis: You seem to think there should be two Courts, one the Board of Trade, and the other a proposed Court to be set up. The Board of Trade could deal with non-contentious questions; but if it is to have an inquiry, and even an ultimately agreed arrangement, some of those, as you in your vast experience know, take a long time; so that we should have two Courts sitting, one for one case and one for another. Is not that it?—You would not have that?

1875. Perhaps I am misunderstanding you?—The Board of Trade would have no judicial power. The Board of Trade would merely have the parties together and say: "Now, what is this dispute about?" The Board of Trade would see if they could remove any misunderstanding there might be and see if any cancellation could bring the parties together, but if they fail to, the Board of Trade has no power to do anything but this. The Board of Trade then says: "We think this is a case which might be dealt with by the Registrar and the Railway and Canal Commissioners," or: "We think it is a case which should go before the Registrar and Assessors, or before the Railway and Canal Commission itself. So, Gentlemen, please yourselves which one of these tribunals you will go before." It is only in case of their not being able to agree that the Board of Trade would then say to which tribunal they would go.

1876. Mr. Abady: The Board of Trade would have power to say that the enquiry should be a local enquiry if they thought it desirable, or if the parties agreed?—I do not know that I should limit the Board of Trade; they would merely say where this must be tried. There would be no two tribunals working at the same time.

1877. Sir Walter Berry: I think you said the Board of Trade had dealt with 1,800 cases?—Yes.

1878. That extends over about 30 years?—No.

1879. Chairman: It is eight years, 1,500 cases in eight years?—Between 1893 and 1907.

1880. Sir Walter Berry: I thought you mentioned since the conciliation of the Board of Trade had been in existence?—No, that is the report here.

1881. Is it your opinion that the Board of Trade enquiries on these points during these years have been really helpful to the trade of the country?—This is a report which was made upon evidence given as to what the Board of Trade had done. I can only say, from my own experience as to the Board of Trade, I have found these applications of the Board of Trade have been very useful.

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued]

1882. I am very glad to hear it. I went on one occasion to the Board of Trade and I met with every possible courtesy. The parties discussed the whole matter and the railway company was advised what the Board of Trade thought they should do. The railway company did not choose to do it, and therefore nothing followed. I had not the money to go to the Railway Commission, and therefore I could not get forward. A huge number of traders are very anxious that the Board of Trade, if they say a thing should be done, should have the power to see that it is done; and that the trade of the country should go on on these lines rather than have it hung up, so that only a few wealthy people like the Mining Association and others can get their cases really dealt with by going to the highest tribunals?

—May I ask you a question?

1883. Please do?—What would you do if there had been a business tribunal such as is suggested?

1884. Well, it is not for me to say what I would do. I would rather reserve it until we have had very full consultation as to what we should do, but what is suggested to us is that the business tribunal should be set up with a proper representation of the railway companies on this tribunal, and in all these smaller matters which the Board of Trade have brought before them—they never have big matters brought before them, I take it—the tribunal would issue instructions which should be followed, and therefore a few weeks would settle cases. I have had the pleasure of going before the Railway Commission. We were there 2½ years. Small traders cannot go on those lines, and I wanted you to help us, if you could, to something else?—I do not think you fully appreciate if this tribunal is to deal with all these disputes—I do not mean to say this offensively—it would encourage disputes. This business tribunal is supposed to be able to do something very, very great, indeed. It would not lessen the number of disputes, and you must have that delay. There are only a certain number of hours in the day, and if this tribunal has to inquire into complicated questions of railway rates or something of that sort, it would have to take time to do it. I really fail to see how you can do it much more expeditiously, if it is to be done properly, and if it is to be a tribunal in which the traders would have confidence, more readily than the Railway and Canal Commission.

1885. After raising the question which I have, showing how many traders of a quite different type from those you are representing feel, you still feel the Board of Trade would be the best court?—I think the proper plan is to bring the matter before the Board of Trade, and see what the dispute is about before you go to any tribunal at all; and then, if it can be settled by explanation, get it settled. If it cannot be settled, then somebody must decide as to how to settle it. I suggest that the Board of Trade should then say: "Now, this is a case which might very well be dealt with by the Registrar or by the Railway and Canal Commission, or by the Registrar with Assessors," and you would get there the business tribunal. I do not understand that it is contemplated that the Railway and Canal Commission should be abolished altogether, though I think I heard Mr. Balfour Browne say something of that sort.

1886. *Chairman:* We have had different views before us. Some say that the Railway Commission should be abolished altogether, some say that it should co-exist with a trade tribunal, and you have given us a third view, that the trade tribunal should not be brought into existence at all?—I do. I say that you have got a trade tribunal in these assessors, if you have two men appointed by the parties themselves—one on each side—or if you have security that the Commissioners should be business men; then I think you have everything there that you can possibly want to get by a business tribunal. However, that is the suggestion which I very respectfully make to the Committee.

1887. It is certainly worth consideration and we will consider it?—I want to speak now about Clause 11 of the Rates and Charges Order. That is the

provision that refers to the short distance rate. It is a provision which, as you will see, I think is necessary. It is a proviso at the end of Clause 11, that traffic as conveyed shall be treated as on one railway. The advantage that the trader should have from that has been, I think, almost entirely destroyed by a decision of the Committee. A question arose on the meaning of the word "conveyed." The view of the Mining Association was that that was the contract of conveyance, not the physical act of conveyance. The Committee decided that the railway companies were right. I will read my proof now.

1888. *Sir Lynden Macassey:* Would you mention the case?—It was the Cheshire Coal Association and I think the London and North Western Railway Company and the Lancashire and Yorkshire Railway Company.

1889. *Mr. Abady:* It is reported in Vol. 13 of the Railway and Canal Traffic Cases at p. 8. It was the Cheshire Coal Association and others, the London and North Western Railway Company and the Lancashire and Yorkshire Railway Company. It is in the Court of Appeal?—It was contended by the traders that this meant the contract of conveyance—that is, the word "conveyed." The railway companies' contention was that it was the physical act of conveyance, and that was the decision of the Committee. Now, the effect of this, as the matter stands, is as follows:—If traffic went over, say, three lines of railway, and the whole distance was, say, 12 miles, the two second companies, by attaching their engine at the point where the systems joined, would be enabled to charge three short-distance rates for the 12 miles route, and I respectfully suggest that that should be altered.

1890. *Chairman:* Could you alter that by striking out the words "by the company"?—I do not quite know how you should alter it.

1891. It states: Provided that where merchandise is conveyed by the company partly on the railway and partly on the railway of another company, the railway shall be considered as one railway. If you strike that out, and say: Provided where merchandise is conveyed partly on the railway of one company and partly on the railway of another company, your difficulty would be met?—The Courts are apt to put constructions on Clauses which neither of the parties contemplated at the time, and I would be rather careful about committing myself. What we want to alter is this. In that particular case, you put your traffic on the London and North-Western Railway, and the London and North-Western Railway's rate for coal is 95d. per ton. Assuming it went six miles over the North-Western line, that would mean 5d. that they could charge; assuming that it went four miles on the Lancashire and Yorkshire Railway, where the rate is 1d. per ton, they could charge 6d. for that; assuming it went two miles over the Great Central, who are entitled to charge 1d. a ton, that would be 1s. 5d. for 12 miles.

1892. Then the remedy you want is to say: Provided where merchandise is conveyed partly on the railway of one company and partly on the railway of another company, the railway and the other company shall for the purpose of reckoning such short distance, be considered as one railway?—I think that would meet it. If it is that the railway companies, as we know it is, want money, and if they say that they must have revenue out of this short-distance traffic, and, therefore, it may be necessary to alter these distances, that is an entirely different thing. I only put it to you that there should be no Clause in an Act of Parliament which would enable the railway company to do as I suggest they can do now, and that is to deprive you entirely of the benefit of that short-distance Clause.

1893. *Mr. Jepson:* I suppose you would agree that the underlying principle of this Clause was this: that it was more economical if traffic could be worked through over the three railways than if separate working on each of the three railways had to take place?—I know that is what you said.

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

1894. You agree with that?—But the effect was, as I have pointed out to you, that you could do that. What I say is, you should not be allowed to do that, and that you should have another Clause. If you want money, get it in some other way, but do not get it because you have got a Clause which deprives the trader entirely of the benefit of the short-distance rate. The only other matter I desire to mention is the subject of exceptional rates. In connection with the carriage of coal, exceptional rates are of the greatest value to consumers. In these I include group rates. It enables coal to be carried either to a port, or some industrial centre inland, at rates which enable the consumers at those points to be able to purchase from a number of collieries, instead of being confined to a few. It is quite true that a scale might be fixed which would do away with a great many exceptional rates, but I think, in the interests of the consumer, that the scale should not apply to coal traffic. The absence of these exceptional rates might be seriously prejudicial to industrial developments in a new district, and the tendency would be to crowd industries around the source of supply. As I have before suggested, coal should be in a class of its own. It is largely the foundation of all other industries, and if it must be moved about so as to supply the needs of industrial consumers, it would be difficult, if not impossible, to include it in a scale rate, without exceptions.

Chairman: We have to thank you, Sir Thomas, for a very clear statement, some of which is carefully reasoned.

Cross-examined by Sir LYNDEN MACASSEY.

1903. I just want to ask you about one or two points on your evidence. I understand you to express the opinion that a poor railway company is no good to the trader?—That is my opinion.

1904. On whatever basis the rates are fixed, I suppose you would say that they ought to be on such principles as would enable the companies to give efficient facilities, and to provide such further facilities as are necessary for trade?—I think so.

1905. Unless that assurance was secured to the companies, it would not be in the interests of this country as a whole?—Well, Parliament has given powers to a large number of railway companies, being satisfied that they could usefully perform some services in the interests of the community, and I think they should have such remuneration as would enable them to perform services which they represent they are willing and able to perform, when they get their powers to perform these services.

1906. And to provide such further services of a similar kind for the development of the country?—I do not think I could escape that.

1907. I think you suggest that the maxima rates should be retained?—I do; but I do not suggest they could be made now.

1908. At the moment, maxima are quite impracticable?—Where you have got a Transport Minister who can fix any rate he likes, it is no use talking about maxima, or anything else; but what I do ask

Cross-examined by Sir LYNDEN MACASSEY.

1912. I only want to ask you question on your suggestion about retaining the Act of 1894. You know that under the Act of 1894 what has to be proved reasonable is the exact increase of rate, and that, although the company proves the increased rate itself to be reasonable, that does not entitle it to charge the increase?—Yes.

1913. You would agree as a business man, dealing with a large mass of railway traffic, that if anything of that sort is to be proved, it should be the question of the reasonableness of the total rate that is charged, but not the finer distinction such as I mentioned?—I could not agree to accept that as a substitute for maxima.

1895. Mr. Jepson: Coal is in the Class A statutory classification to-day?—Yes.

1896. I think you will agree, as a rule Class A rates are never applied to coal?—I should like coal to be in a class of its own. I want to keep out of bad company.

1897. I quite follow that. As a matter of fact, I think coal rates are never the Class A rates?—No.

1898. With a very few exceptions it stands as a class by itself for all practical purposes to-day?—Yes; I want it to do so.

1899. You mentioned just now in your evidence that the maximum rate on the London and North-Western Railway was .95 of a penny per mile, and on the Lancashire and Yorkshire it is 1d. per ton per mile, and on the Great Central 1d. per ton per mile. I think you know from your experience in South Wales, that South Wales companies, like the Barry Company, the Taff Vale Company, and the Cardiff Company carry at less than ½d., or about an ½d., per ton per mile?—They do.

1900. Do you think it would be a practicable thing, therefore, to have anything in the nature of a uniform scale for general application for coal all over the country?—As I have said before, it would be a very convenient thing, but I doubt very much whether it would be a practicable thing.

1901. To have a uniform scale, you would have either to put up the South Wales rates, or pull down the Lancashire rates?—I agree.

1902. Which would not, in itself, commend itself to you as a practicable proposition?—I do not think it could be done.

is this: As I presume that at some time or other we shall get back to more normal conditions, when the railway companies will have some control over their rates, then the railway companies should be required, and there should be a Clause in the Act of Parliament that they should be required, within some fixed time, to put forward certain maxima rates, which should be their limit, and they should be discussed in the way in which the maxima rates were discussed after 1898.

1909. Looking forward to the future so far as one can look forward to the future at the moment, you agree that maxima rates are not now practicable?—I should not say looking forward to the future so far as we can look forward to the future; but I should say during the time that the Ministry of Transport, or any other authority, has absolute power to fix what rates they like, it is no use talking about maxima rates.

1910. Chairman: That is only 15 months at the present time?—That is all.

1911. Do you suggest maxima should be brought in at the end of 15 months?—I suggest this: it is impossible to say when it should begin, but I should say that the Act of Parliament should include a Clause requiring railway companies at some time—either put a limit of time or leave the time to be fixed by the Board of Trade—as a part of a structure, providing that maxima rates are to be fixed.

1914. These are separate points. If any element of reasonableness is to be proved, it should be the reasonableness of the total rate in question. That is what the trader has got to pay?—May I ask, what do you mean by the total rate in question?

1915. Supposing you have a rate of 10s. from point A to point B?—Conveyance rate?

1916. Take the conveyance rate, suppose that rate is increased by 1s. to 11s., what the railway company, if it should be called upon to prove anything, ought to prove is the reasonableness of the 11s. rate?—Well, the working rate is fixed to begin with. If you want to increase that rate, I think you ought to justify it.

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

1917. By proving that the increased rate of 11s. is a reasonable rate under all circumstances?—I do not think I could go into the question of how you should do it. You must do it to the satisfaction of the tribunal.

1918. I am asking you, would you be satisfied, if the rate of 11s. is proved to be a reasonable rate, that the trader ought to pay it?—You must excuse me from saying what I should be satisfied with. Your business is to prove it to the satisfaction of the tribunal that you have to prove it to, and how you should do it I really do not feel competent to advise.

1919. It is not a question of how to prove it; it is a question of what is to be proved. As representing the Mining Association, I understand you would be satisfied if the railway company proved that the increased rate of 11s. is a reasonable rate to charge?—You must justify the increase. You must do what the Act of Parliament says you have to do. You must justify the increase that you propose to put on the rate. What I understand you are asking me is whether you should also be required to justify the increase. The Act of Parliament requires you to justify the increase, and that is all.

1920. I am asking you this question: As the total rate is what affects the traders, is not it a fair thing that the railway companies should be deemed to have fulfilled their duty if they prove the increased rate is a reasonable rate?—Well, I really cannot answer that question. I say what they have to do, if they increase the rate, is to justify the increase. Whether that would be justified by saying: "We will prove that the whole rate is reasonable," I do not know.

1921. Does not it strike you as a little illogical, if they prove the whole rate is a reasonable rate, that that does not prove that the increase was a reasonable increase?—It might, or it might not.

1922. Does not it appeal to you as a business man?—The Court must decide that.

Chairman: What is it that is now required to be proved, Sir Lynden?

Sir Lynden Macassey: Let me take this practical illustration. Suppose the rate from point A to point B—private siding to private siding—is 10s., and that rate is increased to 11s., it is not sufficient, as has been held by the Court of Appeal, to prove that the 11s. is a reasonable rate, having regard to all the services rendered; but you have to take the increase of 1s., and you have to go through all the individual services and find out the increase in cost of each service in question, and then find the total average increase of the lot, and show that that average increase is not more than 1s.

Chairman: Does the Court require that you should prove the whole cost of rendering that service has increased?

Sir Lynden Macassey: Yes.

Chairman: Apart from whether for other reasons than increase in cost it was reasonable?

Sir Lynden Macassey: Certainly, you have to go through each service afforded to the particular traffic in question.

Chairman: Supposing there had been an exceptional rate of 6s., and the railway company came and said it is perfectly true there has been no increase of cost to us, but that 6s. was really unreasonable when it was granted, and we can show that other traders in other places, under similar circumstances, are perfectly content with a 10s. rate.

Sir Lynden Macassey: Then we should fail absolutely to discharge the burden of proof under the Act of 1894?

Chairman: I understand you. Your suggestion is that what ought to be the question for the tribunal is whether the proposed new rate is in all the circumstances of the case reasonable, without the court being limited to looking to the increase of cost as necessarily the only reason.

Sir Lynden Macassey: That is it. We shall develop that at a later stage and show you the almost impossible burden which is imposed on the companies under the Act of 1894.

Mr. Abady: Are you asking that Section 1 of the Act of 1894 should be amended?

Mr. Balfour Browne: That is what he says.

Chairman: I do not think there is any doubt that the railway companies do want it abolished.

Mr. Jepson: You would agree, in reference to what Mr. Balfour Browne said the other day, that the position is really rather anomalous. The 10s. rate, taking your illustration, is fixed, not only having regard to cost, but many other elements enter into the fixing of the 10s. rate; but if it is put up to 11s., under the present legislation, you have to justify the increase of 1s. on cost alone.

Mr. Rowland Whitehead: I do not agree with my friend, Sir Lynden Macassey, in his statement of the law, but I shall develop the matter later on.

Sir Lynden Macassey: I have got the Court of Appeal against my friend.

Mr. Rowland Whitehead: That is quite inaccurate according to my view.

Chairman: He has quite misunderstood the Court of Appeal.

Sir John Simon: Unfortunately, you cannot go to the House of Lords.

1923. Sir Lynden Macassey: I referred to the fact that the traders do not really know of or are not availing themselves of the remedies at their disposal?—Yes.

1924. I do not know whether your attention has been drawn to a similar view in a report of a Departmental Committee on the carriage of fruit in 1905?—No.

1925. Also to a report of a Departmental Committee on the preferential treatment of foreign and colonial merchandise as compared with home merchandise in 1906?—I have not seen that.

1926. There is a considerable volume of authority?—In the same direction that I have mentioned?

1927. Yes.—Thank you.

1928. May I just sum up what I understand to be the practical suggestion from your experience in this way, that conciliation should be exhausted before litigation commences?—Before you take your coat off. 1929. And that if conciliation is to be undertaken under the immediate threat or mention of litigation, your view is that that is not likely to achieve much good?—That is my view.

1930. Your experience confirms what you have just stated?—I think it does.

1931. As representing the Mining Association you have been responsible for not a few, and not unimportant negotiations with railway companies?—Some of them.

1932. Mr. Asworth: Arising out of an answer you gave to Sir Lynden Macassey, you said as long as the Minister has power to fix the actual rates there is no use for maxima?—I cannot see it, because he has excess powers now, notwithstanding the maximum.

1933. If he can fix rates, you do not want a maximum?—No, it is no use.

1934. Do you carry that further? Supposing there was a tribunal that did fix rates, and the railway company could not alter any rate without the tribunal, do you then need a maximum?—Yes, for the reason that I have mentioned to you.

1935. To protect you against the tribunal giving them too much?—No, it is to enable me to see that the railway companies exercise every possible economy in doing their work. If they have rates that they can easily increase, well, of course, there is not the same inducement to economy. If, on the other hand, they have a hard and fast line which they must make sufficient, and it takes them a little trouble to get that increase, I think it secures economical working on the part of the railway companies in a way that nothing else would.

1936. You would not trust the tribunal to press for the economy before they granted the increase?—I would rather have the maximum.

1937. Mr. Jepson: If you had maxima, would you agree that the railway companies could raise and lower rates within the maxima as they pleased?—No, my view is on one of these papers. I say this: When

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

you have got a working rate which would be less than the maxima, the railway companies may, and ought in certain cases, to reduce that rate in the way of exceptional rates in order to meet some particular market in the interests of the consumer.—I put it, not of the trader—and to save a man from being subject to monopoly. Take coal. You want to get as much coal as you can to a man and not confine him to one particular colliery or one particular district. You reduce the rate. Well, circumstances may arise when you should want to put that rate back again. I say you may do it without justification, and it should be on the trader to prove that it is an unreasonable increase, and that you should not have increased it. But if you want to increase something as between the working rate and the maximum, you must justify that increase as you have to do now.

*Mr. Balfour Browne:* I do not think we have a right to cross-examine each other's witnesses.

*Chairman:* You can ask any question to clear any matter up that you wish.

1938. *Mr. Balfour Browne:* Have the Mining Association ever had a case before the Railway and Canal Commission?—Yes.

1939. When?—I cannot tell you exactly when, but we have had one.

1940. It is a long time ago?—It is a long time since.

1941. It has been in existence since 1873?—We have been fortunate in strong evidence in favour of your principle of conciliation?—Yes, I think he has. We have succeeded in a great industry by that means.

1942. *Chairman:* There Mr. Balfour Browne has brought out strong evidence in favour of your principle of conciliation?—Yes, I think he has. We have succeeded in a great industry by that means.

1943. *Sir Walter Berry:* In very big matters?—In very big matters.

1944. *Sir Robert Aske:* Do I understand that you consider that the retention of cut rates is necessary, for instance, to enable Yorkshire coal to go into Lancashire and compete with Lancashire coal there? Well, if you ask me as a Lancashire man, I should say I do not like it, but if I may speak in the interest of the general community, I think it is right. If you take the case of coal coming into the Mersey, Mr. Jepson, who is well acquainted with the difficulties we have to deal with, will appreciate this. The first 20 miles would be in Lancashire .85 of a penny. The next distance is in Yorkshire, and would be something less than that. The railway companies charge us .85 of a penny. I should like them to charge the Yorkshire people only the amount they are entitled to charge them, or if they charge them anything less, to proportionately reduce my rate. But that is speaking, perhaps, for a small area. The people on the river would not like the idea of being confined to using Lancashire coal. They would say that they ought to have the benefit of getting coal further off. Therefore, whilst as a local man I do not like competition of that sort, cutting that rate, because it gives an advantage to a competitor, speaking for the public generally, I think you must consider the interests of the consumer.

1945. You would say, on the same principle, that American coal coming into this country ought to have a cut rate as between Lancashire and Yorkshire, in order to compete with British produced coal?—Not so long as we can supply coal here in sufficient quantities at a reasonable price.

1946. Is not the principle the same?—No, the principle is entirely different there.

1947. May I take it you consider the principle which ought to be applied in the application of exceptional rates is the interest of the consumer and not the wish of the railway companies to compete for traffic? I do not quite know what the second part of your question is. I think the interest of the consumer is the first consideration.

1948. In your opinion, is the principle on which these cut rates can be justified merely that it is the interest of the consumer?—I am speaking of coal.

1949. I know?—I think it is to the interest of the community that the market be given to a man under the best possible advantages.

1950. Could not all the effect that you want be given by including coal in a special tariff and making that uniform throughout the whole country?—I want coal to be included in a special class, but I am not quite satisfied that you could make it uniform throughout the whole country. It would be a very convenient thing if you could, but I am not satisfied that it is practicable.

1951. Do you consider, I am speaking again in the case of coal, that all railway companies should be entitled to give exceptional rates for the purpose of diverting the coal from one port to another port?—I do not know. Give me a concrete instance in which they do that.

1952. For instance, diverting coal from a Mersey port to Bristol Channel port purely for the purpose of competing traffic, or vice versa?—Do you mean to say the railway companies, to enable them to charge a higher railway rate?

1953. No, to divert traffic on to other lines?—I really do not know. I should like to know all the circumstances before I answer.

*Mr. Jepson:* I do not think your question is very clear. Do you mean to say a railway company should not have the right to send Yorkshire coal to Bristol Channel ports at lower rates than it sends to Hull?

*Sir Robert Aske:* As to whether railway companies ought to have the right to divert coal from what one may consider the natural outlet for that particular coal to another port a very considerable distance further off, merely for the purpose of influencing traffic on one line or another.

*Mr. Jepson:* Is it not rather governed by the vessels calling at the port?

*Sir Robert Aske:* Whether, in the opinion of Sir Thomas, that ought to be permitted for the purpose of benefiting any particular port.

*Chairman:* Take the Midland Railway; do you mean that they ought not to be allowed to grant a lower rate to Bristol than Liverpool, even though they might benefit them personally by giving them a longer haul?

1954. *Sir Robert Aske:* My real point is that it is the interest of the colliery, and not the interest of the railway company, in giving a longer haul. Do you agree with that?—I am not sure I quite understand it.

1955. You are familiar with the effects that railway rates have had upon coasting shipping?—Upon coasting shipping?

1956. Is it the fact that the coasting facilities for the shipment of coal have been very seriously prejudiced for the last few years?—Do you mean because there has been less coal?

1957. No, because there have been less facilities for handling the coal?—I cannot say that.

1958. Services discontinued?—I could not say that there have been less facilities. You must remember in many of these cases the facilities on the docks belong to the railway company.

1959. *Mr. Abady:* Is it your view exceptional rates should continue to be allowed in the interests of the consumer?—It is my view—in coal; I am not speaking of anything else.

1960. Just one question on the maximum, to see if I can get your view before the Committee. Is it your view that a railway company having a statutory monopoly should be treated like any other undertaking having a statutory monopoly, and should have a limit placed upon its powers of charge, just as a gas company or an electric light company or water company, or any other statutory undertaking?—I said so.

*Sir Robert Aske:* That is all I want to ask you. Now, Sir, I hope to have the opportunity of addressing you, but I take it that I must wait my turn.

*Chairman:* I think that is more convenient.

*Mr. Abady:* May I take the liberty to make one suggestion. The Committee has naturally been anxious to get an alternative scheme for a tribunal

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

before them. In my view the scheme that Sir Thomas has put before you now, being founded on the Report of the Board of Trade Conference of 1908, with the amendments he has now suggested, does afford a practical working scheme which, I think, contains the elements of expedition and cheapness, and also introduces the business elements which the parties who suggested a business tribunal really desire. I want to suggest if the Mining Association prepared a statement of their view of the tribunal, including incorporating the amendments to the 1908 report which Sir Thomas has put before you, that it would be convenient that the views of the other parties might be obtained on that scheme. I think you will probably find that the parties are not very far apart. It is merely a suggestion I throw out.

*Chairman:* I am obliged. I think we have had an admirable statement of what Sir Thomas' proposal is, and I think that must have reached the minds of everybody in this room, and will reach all those who read the report hereafter. I have no doubt they will say whether they agree with that or still adhere to the other views which they have expressed.

*Mr. Abady:* My suggestion is if the statement is complete that they should be invited to express their views.

*Chairman:* I have no doubt they will. Before continuing the cross-examination of the last witness, with a view of throwing out a suggestion, as I have done before, to invite criticism, I have drafted a proposal for the manner in which questions might be brought before the tribunal, whatever it is, where an increase of rates is being sought by the railway company. The object and intention of the scheme is to meet the particular case where an increase might be required in a great hurry. Sir John Simon has proposed that we should consider the American procedure—I do not think he has committed himself to it being that and nothing else—and at the moment we have not another procedure before us; therefore, I throw out this as a suggestion, in the hope that it will be criticised. The suggestion I make is that, "Any railway company desiring to bring into operation an increase in any rate shall give notice of its intention (a) by a written notice to the secretary of the tribunal and (b) by advertisement in the 'London Gazette,' giving particulars of the proposed increase and of the date when it is proposed that the same shall be brought into force, not being less than two months from the date when such notice is given, and if no notice of objection is given a part entitled to object as hereby defined," it being proposed that the clause shall say who may object, which would include trading and commerce associations as well as the actual parties themselves, "(a) to the tribunal and (b) to the railway company proposing the increase within two months after the appearance of the said advertisement in the 'London Gazette,' the said increase shall become operative as from the date named of the railway company, but if any such notice of objection is given the said increase shall not take effect unless and until the same shall have been approved by the tribunal, but so also that where any increase in a rate shall have become operative without the express approval of the tribunal, it shall be lawful for any trader affected or for any person or body who would have been entitled to object, to appeal against the said increase, and in such case the tribunal shall hear such appeal and may determine whether any, and if so, what increase shall be allowed, and in case of disallowing or reducing the said increase may direct as from what date such disallowance or reduction shall take effect." The intention of that clause is that if there is no objection the rate will come into operation at the end of two months, but although a man had not objected, he might still appeal against the rate; if he did, the rate would have been in operation and the tribunal would say it would cease to operate. Then I suggest that there should be a proviso, "Provided always

that where any railway company desires to bring into operation an increase in any rate without delay, notice may be given by such company (a) by a writing left with the secretary of the tribunal and (b) by an advertisement in the 'London Gazette,' notifying particulars of the proposed increase and of the date when it is desired to bring the same into force, and it shall be the duty of the tribunal forthwith to give notice to such representative bodies as it shall consider best fitted to represent the traders affected and to the railway company of a place and time not being later than 30 days after the receipt of the notice, when the proposal will be considered, and each of such bodies and the railway company shall be entitled to be heard upon the question of whether such increase shall be brought into operation at once or after some and what interval, and after such hearing the tribunal may direct either that the proposed increase shall provisionally come into operation at once or after such interval as it may determine, or may postpone its decision as to the coming into force of the said increase until after such further hearing, public or otherwise, as the tribunal shall think fit. A direction that a rate shall provisionally come into operation shall be without prejudice to the further hearing and determination of the question whether the said increase shall be allowed. If any increase shall be brought into operation by direction of the tribunal, but shall not subsequently be confirmed, any moneys paid by traders in respect of so much of the increase in the rate as shall not be confirmed shall be repayable by the railway company receiving the same to the person who has paid the same." The object of that latter clause is that where the railway companies feel it is urgent, the increase should be brought into operation at once. They may apply to the tribunal, and the tribunal should have the duty of calling before it the trade body which it considers best represents the interests affected, and should then decide whether the increase shall come into operation at once provisionally, or whether nothing shall be done until the whole question has been heard, whether the rate is to be finally approved or not. It puts upon the tribunal the burden of deciding whether it shall come into operation or not. Suppose there has been a sudden and unexpected increase in cost which had to be met at once, the tribunal might say, "Very well, put your increase into force at once, and we will hear subsequently whether in detail it is correct"; but if the tribunal thought there was no such urgency, they would say, "The rate is not to be put in force until after the whole case has been heard out." That will go upon the notes, and I invite criticism upon it at a later period. I do not want any expression of opinion now whether that would be a feasible scheme with or without modifications.

*Mr. Balfour Browne:* As I understand it deals entirely with an increase of some rate. It has nothing at all to do with how that rate is to be determined.

*Chairman:* I was assuming there is originally a rate brought into force. Then the railway companies feel justified in asking for an increase. In the first portion of this clause I was assuming an ordinary increase with no special circumstances, therefore it may well abide its time and not come into force until it has been brought before the tribunal and considered. The second part of the clause assumes the case that there is some great urgency, as, for instance, happened to the dock companies recently, when the rise in wages put upon them the urgent necessity of getting money at a moment's notice. In that case they would go to the tribunal, and they would have a duty, not less than 30 days after receiving that application from them, to call together the persons the tribunal considered best represented the traders. If it were a universal increase, that would probably be the Federation of British Industries and the Associated Chambers of Commerce. If

20 May, 1920.]

SIR THOMAS RATCLIFFE-ELLIS.

[Continued.]

only the mining case they would call together the Mining Federation—

*Mr. Rowland Whitehead:* I think when you come to deal with the problem you will find that the crux of the matter hangs very largely upon whom rests the onus of proof and justification. That is not dealt with.

*Chairman:* Not at all; that is not dealt with in these clauses. That question of upon whom the onus is would be in the general clause of altering rates.

*Mr. Rowland Whitehead:* Under the existing law. That Clause does not deal with it.

*Chairman:* No, it does not deal with it.

*Sir John Simon:* It is nothing to do with it.

*Chairman:* It is nothing to do with it.

*Sir John Simon:* We are very glad that there should be such a suggestion thrown out, and if it were possible to give directions that a number of copies of that proposal should be struck off, so that the people who will have to consider it, so far as the railway companies are concerned, do not each have to get a print of the whole day.

*Chairman:* And spend 1s. 6d.

*Sir John Simon:* Still, it is difficult to find, especially as the Government printer starts re-paging it every day. Other people, when they report law proceedings, page them continuously. We have to find which day page 5 is every day. I wish they would number it continuously. It would be a great convenience if we could have some copies struck off. You will have this in mind, I feel sure, in considering your draft, that it would be on all grounds important to secure that there is no premium on objection. I cannot help saying, no doubt with the most honest intentions, that the first of the two Clauses read out, if I followed it rightly, is one which says to some trading association, "You had better have somebody to object to everything; it cannot do any harm; at any rate, it will put off the day when we have to pay."

*Chairman:* Will you devise some means of preventing that being the case?

*Sir John Simon:* I only point out that does occur to one. The other thing that occurs as I heard it read was this: It would be extremely inconvenient if a railway company found there was no objection until the period—I think you said two months or three months—was all but up, and then perhaps 24 hours before that period is up there is an objection, because they would have made all their plans. I think you would have to provide that the objection is an objec-

tion which is made within so many days or weeks of the notice being published. It would not be possible to leave things so that the objection was only on the last day of the period that had to elapse before which the rate would come into force in the absence of anything.

*Chairman:* Yes, I see, but the proposed scheme, however, gives the railway company the right to name the day from which the increase is to come into force. Suppose it named three months, then if there is no objection at the end of two months that could get at it.

*Sir John Simon:* That would be important to consider in that connection. Finally, one notices, although you make a provision in the second Clause that the tribunal is to deal with, and, I presume, is to decide the matter within, I think, 30 days, there is nothing in the first Clause to secure that, if the matter has to be decided before the increased rate is charged, it shall be decided within any limit of time at all.

*Chairman:* It will be open to suggest that the American five months should operate.

*Sir John Simon:* That is what occurred to me. I am not saying anything more at the moment except it is convenient to get it on the note; but those are some small matters which occur when one listens to the proposal, assuming it was to be accepted in principle.

*Mr. Balfour Browne:* I take it the word rates would include exceptional rates?

*Chairman:* Yes.

*Sir John Simon:* Reasonable rates.

*Mr. Bruce Thomas:* Suppose the Secretary of the Association failed to notify a society that they desired to be heard, I do not know whether there is anything in the Clause which would enable that society to have a right to be heard if they thought they were interested.

*Chairman:* The notification by the Secretary in the second part of the Clause is only with regard to the preliminary hearing. It might be added that any party desiring to be heard should have a right on giving notice.

*Mr. Bruce Thomas:* Thank you.

*Chairman:* I have asked our Secretary to have this printed at the end of the report of to-day's proceedings instead of in its place, and also to have a number of separate copies printed.

*Sir John Simon:* I am obliged. Those who are instructing me will find that a great convenience.

Mr. RICHARD WILLIAM BRADLEY, recalled.

1961. *Sir Lynden Macassey:* I want one or two explanations from you of the evidence you gave yesterday?—I wish to make an explanation first in regard to one or two things I omitted to say yesterday, and there is a correction in the print. It is on page 25, question 1734. It reads: "I know what he has said, and it is not in the reply of the Associated Chambers. We want C and D rates." That is the direct opposite to what was intended, because the word "We" commences with a capital. It is not in the reply that we want C and D rates.

1962. *Chairman:* If you put "that" before the words, a comma and "that"?—Yes. Then in reading my evidence I find that I omitted to read one of the paragraphs, "That the traders have discussed whether the rates should be based on figures to include company's risk, with percentage deductions for risk, or based on owner's risk, with percentage additions for risk. The former method is favoured, provided always the alternative rates are allowed and the conditions understood by both parties and adhered to."

1963. *Mr. Jepson:* That is limiting it to traffics for which it has been the practice to quote owner's risk rates?—No; the traders wish for owner's risk rate or for all traffic, alternative rates for all traffic by a percentage reduction. You only grant them in certain circumstances at present. Then again in Part 4

of the Order Confirmation Act that has been referred to, "Articles of unusual length, bulk, or weight, or exceptional bulk in proportion to weight and other articles requiring an exceptional charge," the definition of an exceptional truck is unsatisfactory because we consider in the trade if you use any railway company's truck at present constructed, no matter what the weight is, the ordinary rates should be charged.

1964. *Chairman:* They will take care not to construct trucks which would carry what you want?—They have trucks already constructed to carry what we want, but our point is: Altered to meet the particular consignment, ordinary rates should apply.

1965. *Mr. Acworth:* You know the sort of charges that are made for the use of a crane at a dock where you have sometimes charged £50 for a lift?—Yes.

1966. Is not it the meaning of that you provide a very expensive article and it is only used occasionally?—In the case of a crane it is a very much more expensive building than a railway wagon by comparison.

1967. Clearly if you were using the most expensive crane all the time; if it was occupied every day for a full day's work, £50 would be an unreasonable charge for one lift?—I grant it in the case of cranes.

1968. The essence is that it is an expensive thing used occasionally?—Yes.

20 May, 1920.]

MR. RICHARD WILLIAM BRADLEY.

[Continued.]

1969. Does not the same thing apply to a boiler truck on 12 wheels?—I do not think so. Where a crane might stand idle half a day waiting for boilers to come down to the docks, a railway truck is always on use at some particular station up and down the country.

1970. You think these exceptional trucks are used just as constantly as an ordinary truck?—I do.

1971. Of course if that is so, but we want to know that.

1972. *Chairman*: And without long runs between empty?—The empty trucks are paid for by the conveyance full, wherever the truck is required. The next point was this. Mr. Acworth spoke yesterday about steamship rates. I consider that the tribunal should certainly have power over rates which are part water and part rail, over any charges made by a canal company in conjunction with the railway rate. When they make up a through rate they should have the jurisdiction over that. Another point was in regard to the draft that you have just submitted. You refer only to railway rates. I would include there rates, tolls, and any other charges. It is an important point so far as we are concerned. I think that is all I have to add.

1973. *Sir Lynden Macassey*: I only want to ask you about one point. You suggested the first thing to be done was to fix standard rates?—Yes.

1974. As I gather, you said the standard rates ought to be in each case the present maximum rates under the Rates and Charges Orders, plus percentages?—Yes.

1975. Will you explain how the percentages would be arrived at? You would take receipts?—Yes.

1976. As per Clearing House?—Yes.

1977. Deduct Clearing House terminals?—Yes.

1978. Find the percentage of increase before the 15th January and after the 15th January?—Yes.

1979. And then add that to maximum powers?—Yes.

1980. That is, in effect, is it not, leaving the railway company with rates which are practically the rates as they exist to-day?—I grant you that. I take it that the receipts which the railway companies are getting to-day are to cover the present cost of running the railways, and that is all that you require.

1981. Then it is quite clear that your standard rates after this somewhat lengthy explanation might be described much shorter at present rates?—Yes, present rates, if you still want to raise the same amount of money as you have to raise to-day in the future.

1982. Your proposal would be that the companies should go on with the rates as they are to-day?—If it is necessary for the receipts of the railways to maintain them, certainly.

1983. Your second step was to provide for any future increases?—Yes.

1984. I did not gather how you suggested that ought to be met?—A future increase would be applied for by the railway company.

1985. To whom?—To the tribunal.

1986. As set up by this Committee?—As set up by this Committee.

1987. So your proposal, to boil it down, is this. This Committee should do nothing in respect of rates, but merely recommend the formation of a tribunal and leave the railway companies to apply to that tribunal if they want any further increase?—No, not quite that. This Committee will recommend that a tribunal be set up. When the tribunal is set up the railway companies will submit their new rates and the tribunal will see whether those are the correct rates or the justifiable rates to put into operation there and then. When that has been done then if the railway companies come for any increase later, the tribunal shall consider that increase up to the extent of, say, a certain percentage and allow it if they think fit. If they wish to go beyond that percentage over the standard they must refer them to Parliament.

1988. Is your proposal this, the present rates which you call standard rates until a tribunal is set up;

after that such further increased rates, if any, which the tribunal might allow?—The present rates I take it will go altogether and the new rates become the standard rates. Many of them may turn out to be nearly the same as the rates to-day.

1989. Your proposal for standard rates was present rates?—Present powers.

1990. Plus the percentage?—That is not present rates.

1991. No, present powers plus percentages?—Yes, present powers plus percentages.

1992. Why have you provided that percentage? What is the percentage you have taken to cover?—Because you asked to-day 60 per cent. for the pre-15th January rates in order to make the railways pay. What is the use of my saying the Powers and Orders Confirmation Act if you want so much more in order to make the railways pay.

1993. You simply take the percentage of increase before the 15th January and after the 15th January as something which exists without any grounds for accepting that percentage?—Only the ground you state, you cannot make the railways pay without you have 60 per cent. in the case of 1 to 5 traffic.

1994. That is what I said, that you take the existing percentage to-day and leave the companies with that percentage, and if they want more, go to the tribunal if and when set up by the recommendation of this Committee. That is the proposal, is it not?—Yes, but we will go a little further. Supposing it was found after this 60 per cent. had been in operation, say, for 12 months, the railway companies are receiving an abnormal amount in proportion to what they did some years ago or just prior to the 15th January, then, naturally, we should ask for the rates to be limited by a percentage.

*Sir Lynden Macassey*: It is quite clear, but it was not clear in your evidence of yesterday.

*Sir Robert Aske*: In your evidence of yesterday you state where it has been customary to give special rates for specific traffics.

*Mr. Jepson*: What question are you referring to?

1995. *Sir Robert Aske*: I am reading from the *péris* of his evidence, "Where it has been customary to give special rates for specific traffics such rates to be continued and made uniform in scales up to 500 miles and to apply between any pair of stations." Does that mean that you transmute all exceptional rates into scales and tariffs and make them uniform all over the country?—No, it does not mean all rates at all. There are in the railway company's rate book a very large number of rates for specific traffics for which scales already exist. Those rates apply over a great part of the country and are uniform. Where those scales exist let those scales be made public and apply for all those particular traffics. I believe they have about 25 scales with the railway company and there are 12 already in the railway classification. Those scales already apply and there are other traffics which have not been scaled which might be scaled. When you come to special rates, which have been called here exceptional, those must be investigated very closely indeed before being renewed.

1996. That is the proposal, that any existing special rate under a percentage below the proposed standard or scale rates, should be subject to close scrutiny by the tribunal before being renewed and all other special rates cancelled. Is the effect of your suggestion that if uniform scales and tariffs be laid down over the country, that all exceptional rates outside those should go, except any particular ones the tribunal should justify on principle if an application is made to keep them in existence?—Exactly.

1997. Could you suggest any principles which should be applied in the granting of those exceptional rates?—Those special rates.

1998. Those outside the scales and tariffs. Can you suggest any principles?—No principle can be laid down because every rate would be on its own merits.

1999. What would you call its own merits? Would you say that one trader competing with another trader in a particular district would justify a special rate?—I do not think so, because that means that

20 May, 1920.]

MR. RICHARD WILLIAM BRADLEY.

[Continued.]

a trader's traffic would be carried at a loss, and some other trader is paying for his carriage.

2000. Exactly. Would one port competing with another be a principle which could be applied?—There again I do not see why the railway companies should carry at a loss in order to rob the steamship companies of their traffic.

2001. *Chairman*: Take the proposition, not carrying at a loss, but less profit in one case than the other?—I go so far as to say at a loss.

2002. Would you consider the case where it was not at a loss, but a small profit in one case and a larger profit in the other?—I do not think I would grant it in any circumstances.

2003. *Sir Robert Aske*: I take it what you mean is this, that if some traffic is being carried at an extremely low rate it means that some other traders are having to make that up?—Undoubtedly.

2004. And that if the traffics were uniform the rates could be lowered in the case of some people who are not getting the benefit of exceptional rates to-day?—There might be some very exceptional circumstances in which a rate should be allowed.

2005. Can you indicate any of those special circumstances, in your opinion, as representing the Chambers of Commerce, where any of these exceptional rates should be allowed in future?—No, I should have to go to the ratebook and examine it. It would require me to consider several rates. I might find one or two.

2006. Speaking generally, your opinion is that all the lot would go?—That is my idea, that the exceptional rates should go.

2007. *Mr. Acworth*: Are you afraid that a railway company deliberately and consciously will carry traffic at a loss?—I mean the railway companies will do anything to carry traffic, because whilst they are taking traffic that pays, they do not lose on the odd wagons that are tacked on to the train.

2008. In other words, they are not carrying at a loss?—Not on the bulk, but on all the country's traffic generally.

(The witness withdrew.)

(Adjourned for a short time.)

MR. GEORGE HENRY WRIGHT, Called.

2017. *Chairman*: I think you are Secretary of the Birmingham Chamber of Commerce?—That is so.

2018. Will you please give your evidence?—I agree with the whole of the replies given by the Association of Chambers of Commerce, but propose in this statement to deal with three only of them—viz., those relating to owners' risk conditions, the proposed new tribunal and local advisory committees, and the rates to be charged on foreign imported merchandise. The Association is of opinion that there should be owners' risk rates and conditions and company's risk rates and conditions for all descriptions of traffic, that the conditions in both cases should be finally settled by the proposed new tribunal, and that having once been settled, the railway companies should be prohibited from contracting themselves out of such conditions. It is particularly contended that railway companies, under owners' risk conditions should not be relieved from all their liabilities as carriers. At the present time, except in certain cases of loss, the railway companies are, in fact, relieved from all their liabilities, except upon proof by the trader of "wilful misconduct" on the part of the companies or their servants. Experience has proved that "wilful misconduct" cannot be proved. It is physically impossible unless the trader with another for the purpose of corroboration can accompany his goods from the time they leave his warehouse to the time they are delivered to the consignee. Existing owners' risk conditions are unreasonable and unfair. In some respects they are absurd as they have been interpreted. For instance, a trader sends away a truck-load of peas and in the rate he pays there is a charge for sheeting. The truck is delayed on the road and encounters a storm of rain. Either

2009. *Chairman*: Do you suggest that they carry at a loss on a portion, and that they would be better off if they refused to accept some portion of their traffic?—They would not be better off, but they are robbing other people.

2010. *Mr. Jepson*: You do not want to limit the railway company in its commercial view, do you?—No.

2011. Why should not they act commercially as well as anybody else, if they find they can get traffic which does not yield so much profit in one direction as another? Why should not they be entitled to do it?—Because the more traffic you get at the extraordinarily low rates that are charged in some cases, as between port and port, the higher you make the charge for somebody else.

2012. *Mr. Acworth*: Take this case, you have a number of wagons going down from the colliery for shipment. They generally come back empty, do they not?—Yes.

2013. Supposing by a very low rate you can get something up the hill again, does it injure anybody unless it is an undue preference? Does it injure anybody as a general principle?—No, there is a case. That is the case the gentleman is asking for. You have explained what he asked me for which I could not give unless I went to the rate book and examined the thing and the circumstances.

2014. You would agree with a very low exceptional rate if it did not injure any competitor?—Undoubtedly.

2015. If it gave the company something for going back empty whilst otherwise it might get nothing, it would be in the public interest?—Undoubtedly, I would apply the exceptional rate in those circumstances, but in a port to port rate you are injuring the steamship company.

2016. That depends on the facts?—And you are injuring the canal company in our case.

*Chairman*: Thank you, Mr. Bradley.

there is no sheet on the truck or there is a defective sheet which does not keep out the water. When the peas arrive at their destination, they have been seriously damaged, and unless the trader can prove that the railway companies or their servants deliberately and wilfully neglected to sheet the truck or provide a rainproof sheet, the owners' risk conditions would be quoted as relieving the railway companies from responsibility. A whole consignment of, say, kitchen ranges may be smashed to atoms, but there is no redress unless wilful misconduct can be proved. Wilful misconduct has been held to be something more serious than gross negligence. Indeed, the railway companies under present conditions seem to be relieved of responsibility for even the grossest negligence. It has frequently been stated that there is a reasonable alternative to owners' risk, viz., company's risk. Theoretically, this may be. Actually, there is no reasonable alternative in a great number of cases. Let us suppose that I am a manufacturer of ammunition. Ammunition is in the dangerous classification for a very good reason. It may explode and blow up the train; therefore I can only send it at owners' risk. If in the course of the transit the ammunition becomes damaged by wet—which may possibly rob it of its explosive character—I make a claim which is turned down on the ground that the goods were consigned at owners' risk. The same result occurs if excessive delay or partial loss takes place in transit. Surely the owners' risk conditions should provide for cases like this, where there is no alternative whatever, and the grounds of the claim have nothing whatever to do with the grounds upon

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

which the goods were placed in the dangerous classification. There is another class of cases where the railway companies refuse to carry goods at company's risk unless they are properly protected by packing. In the great majority of these cases, the provision of so-called proper protection by packing is economically impossible, and it may reasonably be contended that, given reasonable care and handling, there is no need for packing. If all goods are smashed there is no claim under owners' risk conditions, neither is there any claim if nine-tenths of the goods are lost, nor even if they are not delivered within a reasonable time. In regard to (a) the commodities to be placed in the dangerous classification; and (b) articles which will only be carried at company's risk if they are properly protected by packing; we submit that the railway companies should not be the deciding authorities. The question as to, whether an article is so dangerous that it needs to be placed in the special classification for dangerous goods is one which should be settled by the tribunal. Similarly, with regard to goods which the railway companies contend would be packed. It ought not to be in the power of the railway companies to decide suddenly that henceforth they will not carry an article at company's risk unless it is properly protected by packing. Neither should it be in their power to say what is "proper packing"; for example, where canvas or sacking has always been used the railway companies ought not to have the sole right to say that henceforth wooden cases must be used. This has been a source of considerable grievance in the past and has led to many disputes. In regard to all goods placed in the dangerous classification and in the list of articles which must be consigned at owners' risk because they are not packed, it is reasonable to urge that the owners' risk conditions should be different from what they are in the case of ordinary merchandise. In the case of dangerous goods, the owners' risk conditions should not relieve the railway companies from liability for loss, partial loss, damage and delay; and in the case of the unpacked articles referred to, it would be reasonable, where the requirement as to packing is made because the goods are brittle or fragile or particularly susceptible to damage, then the railway companies' liability should reasonably apply to loss, partial loss, and delay.

2019. Then you would really advocate three clauses?—Three sets of conditions.

2020. Company's risk, owner's risk, and the owner's risk clause in case of damaged or improperly packed goods?—Yes; owner's risk where there is a reasonable alternative, a separate one for dangerous goods, and a separate one where goods must be properly packed.

2021. Mr. Acworth: I did not catch that. Would you mind repeating your answer?—I was replying to the Chairman, that there should be three different sets: Owner's risk conditions in the case where the trader has a reasonable alternative rate; another in the case of dangerous goods; and another in the case where goods are carried unpacked and cannot be carried at company's risk unless they are packed. As my connection with Chamber of Commerce work only goes back for eighteen years, I am not able to say what volume of grievance was expressed by the traders concerning owners' risk conditions before that time, but since the setting up of the Joint Claims Committee in, I believe, 1902, complaints have been numerous and frequent. Previously, I understand owners' risk claims were dealt with by individual railway companies, and there was presumably a measure of rough justice, notwithstanding the unreasonableness of the conditions. Since the setting up of the Joint Claims Committee, the conditions have been interpreted very rigidly and their unreasonableness has therefore been emphasized. It is therefore essential for the protection of the trade that for the future, an independent and impartial tribunal should fix the conditions, after hearing the views of all parties, and it is imperative that the railway companies should be prohibited from contracting themselves out of any such conditions, and their responsi-

bilities as laid down therein. The Association of British Chambers of Commerce contend that no owners' risk conditions can be held to be reasonable which relieve the railway companies from responsibility for their own negligence or the negligence of their servants; and a form of words which will protect in a reasonable manner the interests of the carrier as well as the trader cannot be settled by either, but should be settled by an independent and impartial body. It is just as essential to protect a trader against an unreasonable railway company as it is to protect a railway company against an unreasonable trader.

The question of owners' risk also at present applies to goods which come within the provisions of the Carriers Act, 1830. Where the value of a certain article or a consignment of such articles is of a value exceeding £10, a declaration may be made and a higher rate paid by way of insurance. If this is not done, the goods are carried at owners' risk. Owing to the enormously increased value of articles, many traders have unconsciously failed to take advantage of the insurance—have failed to declare the value of the article or consignment—and the railway companies have consistently rejected claims for loss and damage. It is suggested that this matter should be referred to the proposed tribunal, with a view to an amendment in the Carriers Act being made. The suggestion is that the figure of £10 should be increased to at least £25. Another point to which I desire to allude is the Association's answer to No. 1 in the questionnaire. For many years the Association of Chambers of Commerce has been profoundly dissatisfied with the Railway and Canal Traffic Commission as a Court of Appeal for traders. The ground for this dissatisfaction is that it is, to all intents and purposes, a prohibitive Court. It has frequently been pointed out by the railway companies that a trader may make the Court as cheap as he desires; that he may appear in person and thus save expense. But to anyone who has ever been in the Court and observed the method of procedure—which is strictly judicial, and in every sense like that of a Court of Law—the disadvantage to the trader in appearing against an imposing array of Counsel, supported by many railway officials and loads of books and papers, must be obvious. Mr. Balfour Browne, in his address on Tuesday last, stated quite clearly that, in the vast majority of cases, it was merely a question of fact which had to be determined; and the Association of British Chambers of Commerce is sanguine enough to believe that it is not beyond the capacity of the Legislature to set up in the place of the Railway and Canal Traffic Commission, a tribunal which would at once be comparatively inexpensive and composed of business and railway elements, with an independent Chairman, which could—perhaps even without the intervention of Counsel—deal with matters of fact which, after all, are only matters of business. We have no doubt that, whatever the tribunal, the railway companies will be well able to look after themselves. They have never yet failed, and no one begrudges them if their case is the better. Under present conditions, however, there is no real opportunity—owing to expense—of the various points of differences between the railway companies and the traders being considered in a business way. We have heard it recommended that traders should combine and fight test cases. But anyone who has experienced the difficulty of doing this will know at once that, as a matter of general practice, it is impossible. If out of a dozen or more competing firms one has a grievance it would like to test, the others who may not have the same grievance are naturally reluctant to add to their other troubles by pitting themselves against the railway companies of the country. It should be possible for the individual trader with a grievance to fight for himself, and this can only be done if he is given access to a business and an inexpensive tribunal. It might be answered that the effect of a cheap tribunal would be to encourage litigation; but the Association recommend also the formation of local advisory committees. We believe that most of the disputes which arise are local,

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

and are capable of local adjustment. The Chambers of Commerce throughout the country can bear testimony to the fact that many points of difference and difficulty have been settled by a round-table talk with the local managers. Unfortunately, in a number of cases, the managers cannot act, but have to report to their conferences. What we desire is that local advisory committees shall be so constituted that the railway representatives can act when they admit the justice or reasonableness of a claim by a trader. It will be observed that in their reply the Association of Chambers of Commerce do not suggest very wide powers for the Local Advisory Committees. We might also describe them as a sort of Whitley Council. They bring the parties together at a friendly table, and not in a Court of Law; and everyone knows how supremely valuable are friendly conferences, how much that is dark becomes light, how much misunderstanding is removed.

2022. *Mr. Acworth*: I see your point very much. Undoubtedly in a number of cases the managers cannot act—that is to say, cannot make the concession that they may agree is desirable, and they have to report to the Conference?—Yes.

2023. Would Local Advisory Committees get rid of that difficulty?—If the Local Advisory Committees cover the area of the Conferences—for instance, if there were an Advisory Committee for Birmingham, South Staffordshire, and East Worcestershire.

2024. Might not a local manager say, "After all, this is a point which may affect the Sheffield district, or the Manchester district, or the Newcastle district; I cannot give way without consulting the others"?—That may happen in the particular case that you mention.

2025. The point I want you to put your mind to is that it is very desirable if it can be done from one point of view; but is there anything in the constitution of a Local Advisory Committee which would give the manager more freedom than he has at present of acting on the general considerations involved?—If the constituency coincided with that of the Conference in all probability the managers would be able to act.

2026. If it were a matter concerning that trade?—Yes.

2027. Newcastle would not want to interfere with hardware?—No.

2028. But if it were a matter of general interest, clearly it would not help you?—Then one would have to admit that probably another body would have to be approached.

*Mr. Acworth*: I follow your point.

2029. *Mr. Davis*: You have said something about decentralisation—that is to say, you would have Local Committees set up for the area you have named—Birmingham, South Staffordshire and East Worcestershire—and if the question were confined to that area you would submit to the will of a decentralised Committee—a local Committee?—We are not proposing that the Advisory Committee should have any powers to come to decisions; that they should be merely in the form of a conciliation meeting.

2030. *Chairman*: There is one matter to which no one has referred—namely, what sort of number of such Committees you would have in the country. Would about a dozen be enough, or would you want more?—I do not know how many Conferences there are; but I should say at least the same number as there are Conferences.

*Mr. Jepson*: Take your own district—take Birmingham. How many do you suggest for Birmingham? Half a dozen traders and half a dozen railway company representatives?

2031. *Chairman*: I did not mean that. One can see places like Birmingham, Liverpool, Manchester, Newcastle, Bristol, Norwich, the Scotsmen, of course—is it that sort of number, running possibly to a dozen, or would that not be sufficient?—It would depend on the number of Conferences.

*Chairman*: Do you know how many there are?

2032. *Mr. Jepson*: There are several; but many of them are not local Conferences, they deal with

general matters. The number of local Conferences is few.

*Witness*: The Birmingham, South Staffordshire and East Worcestershire Conference deals with that district.

2033. *Mr. Jepson*: Then you have the Mersey ports, and so on, about which we heard yesterday; then there is the Metropolitan Conference, which deals with London matters; the Humber Ports Conference—those are the sort of things you mean, and I think I have enumerated practically all of them?—You probably have to consider whether other Local Advisory Committees should not be set up.

2034. *Chairman*: Probably you want one for the Western counties at, say, Bristol; one for the Eastern counties at, say, Norwich; and one for Scotland as well?—Yes, and probably one in the Sheffield district.

2035. I only want to get an idea of the number you think. Very likely a dozen would be enough, but if it came to fifteen you would have fifteen?—Yes. The last point to which I would like to refer is the Association's answer to Question No. 11, viz., that there certainly should not be any advantage granted to foreign merchandise. In 1914 I gave evidence before the Royal Commission on Railways. The following is an extract from the proof:—"There is another question which should be rectified by the State. The Chamber does not, at present, at any rate, propose to suggest the institution of a system of equal mileage rates for conveyance, but it does seriously suggest that the law shall be so altered as to prevent the railway companies from carrying goods of foreign origin from a port to a centre of distribution at a lower rate than home-manufactured goods would be carried from the place of production to the same centre of distribution. In 1905 the Chamber placed the following figures before the Association of Chambers of Commerce, showing the rates charged under the conditions referred to:—

	Miles.	Rate.	Per ton per mile.
HARDWARE.			
		s. d.	d.
London to Northampton ...	73	25 7	4.2
Birmingham to Northampton ...	49	20 10	5.1
Hull to York ...	45	15 5	4.1
Sheffield to York ...	48	20 10	5.2
London to Peterborough ...	116	28 5	2.9
Birmingham to Peterborough ...	81	25 4	3.8

2036. *Mr. Acworth*: You have your Peterborough distance wrong. The distance is 76 miles?—Yes.

2037. So that the rate must be wrong too?—I have not my original paper with me.

2038. You can take it from me that it is 76 miles, or near by?—Yes. My proof goes on to say:—

	Miles.	Rate.	Per ton per mile.
CUTLERY.			
		s. d.	d.
Hull to York ...	45	15 5	4.1
Hull to Leeds ...	51	16 8	3.9
Sheffield to York ...	48	20 10	5.2
Sheffield to Leeds ...	43	18 0	5.0
PLATED GOODS.			
London to Northampton ...	73	28 3	4.6
Birmingham to Northampton ...	49	24 9	6.0
Hull to York ...	45	18 9	5.0
Hull to Leeds ...	51	20 0	4.7
Hull to Sheffield ...	49	22 11	4.6
Sheffield to Leeds ...	43	21 4	5.9
Sheffield to York ...	48	24 7	6.1
Leeds to York ...	30	17 6	7.0

2039. *Chairman*: You will no doubt observe that in some of those the distance makes a difference. Any that are under 50 miles do not come into the tapering rate, which governs from 50 to 100 miles?

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

—I think I refer to that in the next paragraph. It will be seen from these figures that in every case the rate per ton per mile is higher on the home-manufactured article than it is on the imported foreign article, and that this applies where the distance covered by the home-manufactured article is greater. For instance, the distance from Hull to York is less than the distance from Sheffield to York, and yet the rate per ton per mile is 1-1d. per ton per mile higher on the Sheffield goods. We think that rates should be arranged upon the principle of assisting and developing export trade and such provisions made as will guarantee by any method whatsoever—that imported goods shall not have the advantage of preferential rates over the home traffic.

2040. *Mr. Asworth*: Are these all class rates?—No. Hardware would be exceptional, so far as Birmingham is concerned.

2041. It is a scale?—Yes. They are rates quoted to me by the railway companies.

2042. Are they available for anything over 3 cwt.?—Yes; these are tonnage rates.

2043. In all cases?—Yes.

2044. With no condition of tonnage?—No, with no condition of tonnage.

2045. *Chairman*: Do you know whether in any of these cases the lower rate—for instance, from Hull—was given to enable Hull to compete with Liverpool?—The only explanation I can give is this, that the rate from Hull to an inland centre of distribution is an export rate really which is used for import traffic; whereas the rate used from Birmingham to an inland centre of distribution is a town rate.

2046. We have heard on some occasions that, in order to let all the ports compete fairly the one with the other, sometimes a special rate, or exceptional rate, is granted in the interests of the weaker port. It really is as between two ports?—Yes. But in effect it works out as a penalty against the home-manufactured article.

2047. *Mr. Jepson*: Would not many of the Hull rates be governed by water competition, such as that of the Aire and Calder, which does not apply in the case of traffic going in the other direction, say, Sheffield?—Possibly.

2048. What do you suggest should be done in that case—that the railway company should give up carrying and let the traffic go by the water or canal route? The competition would probably remain the same, but the railway company would be deprived of the smaller rate of profit they were making in competing with the Aire and Calder?—I think the rate which the imported merchandise should bear should be at least a town rate, and the imported traffic should not get the advantage of an export rate.

2049. Notwithstanding that the loss of that would mean the loss of the traffic to the railway company?—I doubt very much whether it would mean the loss of the traffic to the railway company.

*Mr. Jepson*: I am putting that case.

2050. *Mr. Asworth*: Leaving out the disadvantage of the Railway Commission as being an expensive tribunal; supposing you had a cheap and expeditious tribunal, are you satisfied with the system that no railway company shall make, nor shall the Court sanction, any difference in the foreign rates or charges made for or any difference in the treatment of home and foreign merchandise in respect of the same or similar services?—That is exactly what we want altering.

2051. You want it altered?—Yes.

2052. Let us understand how much you want it altered?—We do not want import traffic to get the advantage of an export rate.

2053. That you have got under this Act: You shall not make any difference between home and foreign traffic, either as regards import or export, under the existing law. What you want, if I understand you rightly, under no circumstances shall import traffic get a benefit. Am I right so far?—Yes.

2054. But you think that export traffic should get a benefit because it is export?—I think the export traffic should get the same encouragement that it

gets to-day; but the rate which was granted primarily for export traffic, as I assume, should not be given in the reverse direction for imported traffic.

2055. You want that law altered, apart from the machinery?—That is so.

2056. You want the law to say that you shall not under similar circumstances give any advantage to import traffic?—Yes.

2057. But you may under similar circumstances give an advantage to export?—Yes.

2058. *Mr. Davis*: I want you to develop one point. You say that interests should be able to appear in person and thus save expense?—Yes.

2059. What do you mean by that? Does it mean that you would be prepared to deal with a commercial agreement (whatever it may be) without referring to any tribunal?—I do not quite understand your question.

2060. You said that you wanted interests to be able to appear in person and thus save expense?—Yes.

2061. Will you develop that?—We want a Court where it will be practicable for a trader himself to go if he wishes and fight his case. It is quite impracticable for a trader himself to go to the Railway and Canal Commission and appear against a railway company.

2062. In consequence of the enormous expense?—Yes; because he must have Counsel to do it properly.

2063. Very well. Then supposing such representations were made by a person or persons, you would be prepared to submit to the will of a commercial tribunal?—On questions of fact.

2064. *Mr. Martin*: Is not one of the difficulties of proving a foreign preference those words that were inserted "under similar circumstances"?—No. The cases that I have quoted are not cases of undue preference at all; they are questions of accidental preference, if you like, owing to the application of an export rate to import traffic.

2065. But there are a great many rates, and a through rate from abroad which acts distinctly as a preference for importing foreign goods through Hull and these various other ports?—I have never had a case proved to me that the railway companies have in fact—in cases that have been reported—been proved to have given an undue preference. The railway companies, as I assume, always get their full rate from the port to the inland centre.

2066. I am afraid you have not had much experience of through rates?—We have 3,500 members, and many reports have been made of cases of undue preference, but I have never been able to get one substantiated.

2067. We have got some in London.—Yes.

2068. *Mr. Jepson*: Are you sure you are right in what you say, that the reason of these differences, to which you call attention, is the application of an export rate to import traffic?—Yes.

2069. Looking at the illustrations you give, they do not appeal to me as such. Take London to Northampton. You give a rate for hardware. One can understand that is imported hardware?—Yes.

2070. But there is no hardware made at Northampton, is there, for export from London? There is no hardware made at all at Northampton, is there?—No, I do not think there is.

2071. Then that must be wrong where you say that the companies have applied a 4s. 2d. export rate for hardware from Northampton to London, and in the reverse direction?—There may be a rate from London to Northampton on hardware which might have originated in London and not in Northampton.

2072. I do not follow that. You give London and Northampton 4s. 2d. for hardware?—4s. 2d. per mile.

2073. You say that is because of the export trade in force from Northampton to London. It does not appeal to me that it can be so?—Probably not in that particular case.

2074. Take plated goods, London to Northampton, where it is 4s. 6d. There are no plated goods made

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

at Northampton for export to London?—Take the other case of Sheffield to Leeds.

2075. I am afraid you have been speaking too generally?—One can only deal very generally with questions of this description.

2076. *Mr. Acworth*: Clearly you would say that a

rate in one direction ought not necessarily to apply in the other?—That is so.

2077. If there were, for example, plated goods coming into Hull from Sheffield, you would deliberately apply a higher rate from Hull to Sheffield than from Sheffield to Hull?—I should apply a town rate

Cross-examined by Sir LYNDEN MACASSEY.

2078. Would you be good enough to let me have the statement of rates which you have been reading from, as it is difficult to make a note while you are reading so rapidly?—Certainly. (*Copy handed.*)

2079. Some of these rates are rates to and from ports?—That is so.

2080. And others are rates between two inland places?—That is so.

2081. Your point is the difference in rates between the two inland places as compared with the difference in rates to and from the ports?—Yes.

2082. I do not know whether you know that this very matter has been very fully inquired into by the Departmental Committee on Railway Agreements and Amalgamations in 1911?—Yes.

2083. Let me read this paragraph to you from their Report: It is paragraph 26 on page 9 of the Report. It is speaking about competition, mainly sea competition. "The effect of this indirect competition is frequently exhibited in the case of export and import rates. Rates between competing ports and an inland centre are generally equalised, and this equalisation tends to be carried further when the respective ports are served by rival railways." That means, taking rates to and from certain points, to and from competitive ports, those rates affect the other rates in the same district. You agree to that?—Yes.

2084. "The lower scale of rates to or from the distant port may sometimes tend also to reduce the charges made on the traffic of intermediate places." That you would agree to?—Yes.

2085. Then paragraph 28 is this: "The effect which railway competition has on export rates is not limited to the case of rates in force between an inland point and competing ports. The rates charged by one company between an inland place and a port on this system may be affected by the rates charged by another company on similar traffic between another inland place and another port. For example, rates on coal sent from the Nottinghamshire and Derby Coalfields to King's Lynn for export are lower in competition with the rates charged on South Yorkshire coal exported from the Humber. The fact that "lower rates are frequently granted on exported traffic than on similar traffic sent to ports for home consumption is probably due, in part, to this form of indirect competition, and for a similar reason, some rates charged on imported traffic are probably lower than they otherwise would be."—Yes.

2086. Does it not follow that you must, under ordinary economic conditions, where you have competing ports, have the rates to and from the ports lower than the inland rates?—That is the thing that we wish to have amended.

2087. Do you wish to bring down the inland rates to the lower artificial level of the competing port rates?—We think that goods going from Birmingham to an inland centre of distribution should have a rate at least no higher than the rate which is charged from a port to that same centre. That is the least we ask.

2088. You must do one of two things. You must either lift the level of rates to and from competing ports to the level of inland rates, or you must reduce the level of the inland rates down to the level of the rates to and from the competing ports?—Yes.

2089. Which do you suggest ought to be done?—Raise the rates on the imported articles.

2090. Raise the rates to and from the ports?—Not to and from the ports—from the port.

2091. You will have a different rate to the port to the rate from the port?—Undoubtedly, that is the only way in which you can give advantage to home produce.

2092. That is what you want?—Yes.

2093. That is the real point of your criticism; you want advantage to home produce?—We desire that rates should be based upon the principle of assisting and developing the export trade.

2094. That merely means a bounty to the home trader drawn from other traders?—No, it means that the imported traffic shall pay a rate on a town basis, and not on a port basis.

2095. If that is below the economic level of rates, the difference must come from somewhere?—Yes.

2096. It comes from other traders?—We ask that it should come from the importer of the produce.

2097. I think I understand, from an answer you gave to Mr. Acworth's question, that you want the proviso in Section 27 of the Act of 1883, which prohibits what you ask should be done, to be repealed?—To be amended.

2098. To be repealed?—To be repealed, if you wish.

2099. It comes to the same thing?—Yes.

2100. I want to ask you about another matter, namely, that the owner's risk rates and the company's risk rates. You know the company's risk rates are rates which the company are authorised to charge when they assume the ordinary carrier's responsibility for the goods?—That is so.

2101. It is to be presumed that those rates, when fixed under the directions of this tribunal will be reasonable rates?—Yes.

2102. For the services which are included?—Yes.

2103. Why do the traders want owner's risk rates?—Because much of the trade of the great industrial centres has been built up on owner's risk rates. They have been of considerable advantage in the development of industry, and we desire that they should continue.

2104. So that the difference in charge between the company's risk rate and the owner's risk rate has been of great advantage to the traders?—They have been of advantage to the traders.

2105. I may assume that in respect of very large volumes of traffic the advantages are so great as to induce the trader invariably to ask for owner's risk rates?—I do not know about the trader asking for owner's risk rates. Applications are made from time to time for owner's risk rates.

2106. Anyhow, if he does not ask for it, he sends his goods by the owner's risk rates?—Sometimes he gets owner's risk without asking for it, in the case of dangerous goods and unpacked goods.

*Chairman*: On the present occasion the traders all ask that there shall be owner's risk in every case?

*Sir Lynden Macasey*: Yes.

*Mr. Jepson*: That was Mr. Wright's own evidence.

2107. *Sir Lynden Macasey*: I am just coming to that. Notwithstanding the advantage to the traders to-day, of getting owner's risk rates as compared with company's risk rates, you want those advantages increased now at the expense of the railway companies?—No, we want the agreement to be a fair and reasonable one.

2108. The company is entitled to charge a company's risk rate when it, as a carrier, assumes the responsibility for goods?—That is so.

2109. That is the ordinary position?—Yes.

2110. Instead of asking you for company's risk rates, the company give you the owner's risk rates, which you say is of great advantage?—Is of advantage.

2111. And has had the result of building up many industries in many parts of the country?—Yes.

2112. Notwithstanding those advantages, what you ask is that they should be increased to the trader?—

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

Yes, because no advantage which we can get out of the owner's risk rate can do away with the fact that the owner's risk conditions are unfair and unreasonable.

2113. If the owner's risk rates were of disadvantage to the trader financially, he would not send by the owner's risk rates, but he would send by the company's risk rates?—Yes, but before 1902, when the industries were built up under the owner's risk condition, claims were made and dealt with on their merits by the railway companies. Since 1902 the general practice has been to reject all claims.

2114. Let us just deal with the facts first. Unless there was a financial advantage to the trader in sending his goods at owner's risk rates, the trader would not send them?—Obviously.

2115. He would send them at company's risk?—Quite so.

2116. But the trader is, in fact, to a great extent using owner's risk rates to-day?—He is using owner's risk rates where they exist.

2117. Because of the advantage to him?—Some owner's risk consignment he has to accept because there is no other condition.

2118. You know there is always a company's risk rate. There may be a class rate, but there is always the company's risk rate?—There is the company's risk rate with the owner's risk conditions.

2119. You are speaking of dangerous goods?—And unpacked articles, which is a growing trade.

2120. Which the company are not bound to carry; but dealing with the goods which the railway company are bound to carry, there is always the alternative between company's risk rate and owner's risk rate?—That is so.

2121. Because of the advantage, the trader uses the owner's risk rate?—Yes.

2122. Notwithstanding those great advantages which you have spoken about, he asks that the advantages shall be still further increased to him at the expense of the company?—Within reason.

2123. But at the expense of the company?—Before 1901, as I have explained, the railway companies met—

*Chairman:* The logic of your question is irrefutable. On the other hand, it is sometimes a wise thing to remove friction, even if the friction is caused by illogical arguments.

*Sir Lynden Macauley:* It very often removes friction if both sides see the equities; but it is because I am not quite sure that that is apparent that I put my question.

*Mr. Balfour Browne:* I think it is a great pity that time should be, I will not say wasted, but used in discussing this owner's and company's risk rates. You suggested quite early that we might try to agree clauses to deal both with the company's risk and the owner's risk. I had clauses prepared, and I have offered to exchange them with my learned friend and to submit them to the tribunal. If they will give me their owner's risk and company's risk clauses, I will give them mine, and then they can be handed up to you. It does seem to me a great pity to spend time on this.

*Chairman:* Sir John Simon has given his answer. He is content with those that were fixed in 1909 and does not propose to go from them. If you can induce him to recede from that position and discuss with you some modifications, then it may save the tribunal having to come to a decision.

*Sir John Simon:* In any case, I should be very glad to see my friend's suggestions. I am sure they will be most carefully drawn up. I am rather on strong ground when I say I think the conditions existing at the present time are proper, because they are conditions which some members of this present Committee thought to be proper.

*Chairman:* I do not suggest they are not the fairest in the world, but the traders do think they have not worked so well as they hoped they would.

*Sir John Simon:* Probably that is the point to which my learned friend Mr. Balfour Browne's draft is

addressed. I hope he will not think I am in any way refusing to look at it or to consider it. I will gladly do so, but on my side at present I have no suggestion, I am afraid, which I could usefully make other than to call attention to the fact that the conditions were in themselves modified very recently as the result of an impartial enquiry, the authority of which is obvious to us all.

*Mr. Balfour Browne:* If the past is to govern your deliberations there is nothing more to be said.

*Chairman:* How would it be if you submit your clauses to Sir John in the hope that he will find them so reasonable that he will accede to them?

*Sir John Simon:* I am not claiming verbal inspiration for anything.

*Mr. Balfour Browne:* You are claiming to consider my clauses. That is not the question. It is for this tribunal to consider the clauses.

*Sir John Simon:* All right.

*Mr. Balfour Browne:* I am quite willing, if you have anything to propose, to exchange the proposal I make with yours. If, on the other hand, you merely say, we are to be in a position to demand any conditions we like, as we do at present, especially if those conditions have been settled by the Committee of 1909, I understand your position, and in the meantime I would not propose to submit my clauses.

*Sir John Simon:* Is that very reasonable?

*Chairman:* I think Sir John's position is a very strong one. He says: Here are the conditions; they are reasonable. That is his first submission. Then he says, not only are they reasonable, but even the traders themselves thought them reasonable 10 years ago. That is only an argument to support his proposition that they are reasonable. It is not that they are impregnable. Even the Hindenburg Line was not impregnable, though it was considered very strong.

*Mr. Balfour Browne:* If my friend's position is that he is not going to submit any clause on behalf of the railway companies, then I do not think I should submit any clause either.

*Sir John Simon:* I want to appeal to Mr. Balfour Browne about this. We ought not—I will not use the word "waste," but to use time on such a point as this. I tendered to my friend the conditions as they were settled by the Committee a few years back, according to my present information would constitute, as it seems to me, fair and reasonable conditions. I am most willing and anxious to study any conditions which he thinks would be an improvement, and I invite him both to allow me to see his draft which he has had in his keeping for some days, and at the same time, no doubt, to allow it to go upon the Note.

*Mr. Balfour Browne:* It is just as reasonable to tender that to me as if I tendered to you the arrangement that was come to by Lord Balfour and Sir Courtenay Boyle in 1898. You are to consider the whole matter afresh.

*Sir John Simon:* I cannot do anything more.

*Chairman:* Certainly, we shall. Nothing is conclusive. Everything is open. You may suggest any clause you wish. Ultimately, if you are going to ask us to make changes in the existing circumstances, you will have to tell us just what the change is that you want. I thought it might be a short cut if you discussed it with Sir John.

*Mr. Balfour Browne:* I am quite prepared to tell you, and I will submit the clause to you, and my friend can see a copy of it, but merely to submit it to him for his consideration is something I rather decline to do.

*Mr. Jepson:* Is it not rather a shorter cut than if you submitted the clause to us and we should have to ask the railway companies what they thought of it?

*Mr. Balfour Browne:* Apparently the railway companies decline to do what was the suggestion of the Chairman, that they should submit their clause. Why cannot they turn their conditions into a clause, as though it were a clause in a Bill? Supposing their clause is accepted, the trader would know where he was and would not have to sign any conditions. We object to these conditions. If it is a clause in a Bill

20 May, 1920.]

MR. GEORGE HENRY WRIGHT.

[Continued.]

that you accept from us, then the railway companies would know where they are, both with regard to owner's risk and company's risk.

*Sir John Simon:* I am not going to occupy any time about it. My friend quite understands my suggestion.

Cross-examined by Sir ROBERT ASKE.

2124. With regard to the various rates which you put before the Committee, as I understand, your point was that as an inland trader you are entitled to have your goods carried at the same rates as exist between one port and another or from one port to an inland town?—Yes.

2125. And that uniform rates ought to exist in all those cases?—No; I have not spoken of uniformity. I am not in a position to give evidence with regard to uniform rates. I am merely mentioning this as an instance which we want remedied.

2126. *Mr. Head:* I am not appearing for any railway company, but I am appearing for some traders. There is a point we might elucidate together. As regards the Railway and Canal Commission, the difficulty that you have is the expense of its proceedings?—That is so.

2127. That expense is not the expenditure connected with the Commission itself, but the distinguished Counsel who appear for the railways?—Yes.

2128. This is just a tentative suggestion that I want to put to you. Supposing that some arrangement was made by which the legal costs of any appearance before the Commission were strictly limited, would that remove your objection to appearing before that Commission?—No, my instructions are to support the formation of a new tribunal.

*Sir John Simon:* I would like to remind my friend that, as a matter of fact, in litigation before the Commission between traders on the one hand and the railway company on the other, even if the trader loses, the trader does not pay the railway company's costs, or any part of them. It is, therefore, a complete fallacy to suppose that the particular Counsel engaged add to the expense.

*Chairman:* Some Counsel have such an *aura* about them that the traders are afraid to face them without being fortified by similar Counsel.

*Sir John Simon:* Not since Mr. Balfour Browne retired.

*Mr. Balfour Browne:* Might I refer to page 8 of the Notes of the 11th May, where you made the request and where my friend, as I understood it, seemed to assent to it. I do not want to read it.

Mr. GRANVILLE F. BILBOROUGH, called.

2126. *Chairman:* Are you in the Railway Department of the Birmingham Chamber of Commerce?—I am.

2127. Will you tell us what you wish to say to the Committee?—I should like, first of all, to mention the question of owner's risk rates, which has just been the subject of some discussion. Sir John Simon has been laying very great emphasis on the supposed agreement that was come to in 1909. Just before his arrival, Sir Lynden Macassey was making reference to a very important Departmental Committee in 1911. Although he quoted pretty extensively from that with regard to import rates, I noticed that he kept very quiet with regard to recommendations with regard to owner's risk rates. I should, therefore, like to quote what the Departmental Committee said with regard to certain features of the owner's risk rates. It is C.D. 5631, paragraphs 113 and 114. Those paragraphs read as follows: "Certain articles, if sent insufficiently protected by packing, will only be accepted by the companies at owner's risk, ordinary rates being charged. While it is obviously fair that if the companies carry articles unpacked which they might reasonably require to be packed, they should not be held liable for any damage arising from the fact that the articles are unpacked, we

*Mr. Balfour Browne:* I quite understand your suggestion. It is one of the obstructive suggestions made by the railway companies.

*Sir John Simon:* The Committee will judge of that.

*Chairman:* I understand he has acceded to my request by saying the particular clause I want is that which was agreed in 1909. Supposing it had not been agreed in 1909, and he handed that in as being his clause, it would be in the same position as it is now.

*Mr. Balfour Browne:* Very well.

*Chairman:* It is quite open to a man to say I am prepared to make no concessions. If he is prepared to make no concessions, then the other people must try and force them on him.

*Mr. Balfour Browne:* Then the result is, instead of agreeing as we hoped, we disagree, and we will put in our own clause, and my friend can put in his conditions.

*Sir John Simon:* Perhaps my friend will agree to my conditions after all.

2129. *Mr. Acworth:* I do not know whether you heard Mr. Marshall Stevens' evidence?—Part of it.

2130. On the 12th May he gave us a rate of five francs—this was a pre-war rate—from Dunkirk and Boulogne to the French wool towns, Roubaix, Tourcoing and so on?—Yes.

2131. He held that up as a very low rate. I have caused that rate to be looked up, and I find that the condition on the Notes is that it is for overseas wool?—Yes.

2132. There it is used as a low rate for import traffic for the benefit of the French wool manufacturers?—Yes.

2133. Would you forbid that?—I should prefer not to reply. I am here merely representing a manufacturing district and so far as my experience goes.

2134. Let us suppose, for the sake of argument, there was a low rate for tinplate baths, or something of that sort. Tinplate baths is not a good instance, but such iron as you yourself use in the hardware trade of Birmingham—say, a low rate on imported iron, for Birmingham to work up into the finished article?—I should object to imported iron having a lower rate than the iron made in this country.

2135. So that, without committing yourself, taking the analogy from the wool trade, you do not think there ought to be a low rate of wool into Bradford from overseas?—That is so.

fail to see why this circumstance justifies them in escaping liability for delay or mis-delivery or damage due to other causes. We therefore think that in such cases the company should not absolve themselves from liability, except that which arises in consequence of the goods being unpacked." Then paragraph 114 reads: "Similar considerations apply to the case of certain dangerous or inflammable goods which the companies will not carry except at owners' risk. It may be reasonable that they should refuse to carry such goods unless the trader agrees to exempt them from liability to compensation in respect of accidents occurring in consequence of the nature of the goods, but we think that if they carry such goods they should not deprive the trader of an opportunity of sending them on terms under which the companies would be responsible for loss or damage occurring as a result of their own negligence and not in consequence of the nature of the goods." I think that all the traders ask for is that in any recommendations it would be ordered that those decisions were duly registered.

2138. *Chairman:* That gives Sir John Simon something to think about.

*Sir John Simon:* Yes; I am much obliged.

20 May, 1920.]

MR. GRANVILLE F. BILBOROUGH.

[Continued.]

*Witness:* I should like to say, generally, I am in agreement with the various replies that have been made by the Association to the *questionnaire* from the Ministry of Transport. I should also like to associate myself with various remarks which were made by Mr. Currington on behalf of the Federation of British Industries. In some respects there would appear to be a fairly general consensus of opinion. With these particular points I do not want to deal at any length, but I will confine myself more particularly to the matters which seem to indicate divergence and to the practical questions which may arise therefrom. I should, however, like to preface any remarks I have to make by saying that it is impossible for the traders to subscribe to the proposition of the railway companies that the powers should be unrestricted as to quantum, except by the general rule that they should be reasonable. This particular feature was emphasised, I believe, by Sir John Simon in the course of some of his remarks, but I should like to say that this is entirely unsatisfactory to the traders. They have had very considerable experience in dealing with questions where the words "fair and reasonable" come in. It generally works out in actual practice that what in legal parlance is said to be fair and reasonable, so far as the traders are concerned, generally proves to be unfair and unreasonable. I would like to make reference in this connection to the Act of 1854. There the companies were held to be liable for neglect or default, but they might make such conditions as to receiving, forwarding and delivery of traffic as may be adjudged fair and reasonable. What do traders find at the present time? On the back of the consignment note which they are asked to accept, and in respect of which the traffic is actually refused if they do not accept the consignment note, there are conditions which have nothing whatever to do with receiving, forwarding, or delivering. In a question of general lien it may refer to something which happened two months before. In respect of the 14 days' notice, it refers to something which happens 14 days afterwards. The net result of this enactment and its interpretation has been an increase in the limitation of liability and the imposition of burdensome restrictions, which it is the hope of the traders will be inquired into and made the subject of some suitable recommendations. In respect of Part 4, there has already been sufficient evidence tendered, I think, that, although the companies may charge such reasonable sum as they think fit, yet as a matter of fact many of these charges are deemed to be altogether unreasonable, and the request is made that many of the articles which are now in Part 4 shall be put into the general classification, and the actual maximum rates fixed in respect thereof. In the same connection, I should like to mention the question of passenger traffic or merchandise which travels by passenger train. In respect of this particular traffic the railway companies are empowered to charge any reasonable sum that they think fit at the present time. The consequent result is, we have recently had an extraordinary increase in the rates of traffic which passes by passenger train. Taking the pre-1914 rates with regard to existing rates on goods passing by passenger train, that is merchandise, we find that in some instances the figures have gone up at least 300 per cent.

2139. *Chairman:* Are you speaking of the increases that were made by the Ministry of Transport on the recommendation of this Committee?—Partially, and also the inter-increase that was made just previously. The result has been, in some instances, to give an increase of 300 per cent.

2140. That is the result of a Clause in the Ministry of Transport Act that whatever the Minister does shall be deemed to be reasonable?—Yes; but there was an increase before that, and a very considerable increase.

2141. I do not know whether the previous increase was by the railways alone, or on the instructions of the Minister, but presumably it was on the instructions of the Minister?—That may have been so. I am not going to say what are the specific reasons that may be behind it; but the net effect remains that in these charges there has been an increase of 300 per cent. We should look with very grave alarm on any arrangement which would make it possible, either on the instructions of the Minister or anybody else, that the goods rate should go up 300 per cent. To put the matter briefly therefore the traders wish to have the rates plainly defined if possible in respect of all classes of traffic, and whether these may be termed the maximum rates or the standard rates is merely a matter for definition, so long as the traders have the safeguard against the dangers which always inhere in monopoly—especially when that monopoly absolutely controls one of the vital services upon which the community rests. With respect to the question of variations from the maxima, the attitude of traders is conditioned by, and dependent upon, the nature and character of the new tribunal which it is proposed to set up. If it be thoroughly representative in character and impartial, it will commend itself to traders and they would be prepared to accept its decisions in case of disputes. Unless this is secured, it is felt that there can be no possibility in agreeing to any relaxation of the Act of 1894. Much has been said during the Inquiry with regard to the question of exceptional rates and their multiplicity, but no emphasis appears to have been laid upon the fact that the majority of them are chiefly exceptional in that they make provision for restricted services, and are therefore lower on that account. These diminutions in the services are for such elements in the rates as are not used or only partially used. They are quoted as "exclusive labour," "owner's risk," "from or to private siding," and therefore only including only a portion of the terminals. There are also allowances for bulking and the like. Many of these rates would automatically vanish were they built up to include the services usually provided. Thus in the Railway Exceptional Scales we find that the rates are quoted somewhat as follows:—Iron and steel 4 ton loads, O.R. exclusive labour. Sanitary tubes, 2 ton loads, O.R. exclusive labour. With a large amount of the traffic which is usually classified in one of these, rates are built up we will say on the powers, 1Y or Y1 powers, say less 10 per cent. previous to 1913, which now gives a reduction of say 6 per cent. in respect of 2 ton load sent which is practically negligible in its character. It is hoped by the traders that the suggestion will materialise for the incorporation of the railway companies' private scales in the standard rates, and that these will be applied generally in all places and to all traders offering the requisite traffic in the prescribed quantities. The defect of the present system is that one trader may get the benefit of a scale and another be excluded therefrom through ignorance of its existence or other similar causes. With regard to the scale of rates there appears to be some unanimity amongst all sections that, as far as practicable, a uniform scale of rates should be adopted. Doubt was, however, expressed by some—as in the evidence of Sir George Beharrell—as to how far this could be taken. It is the wish of the traders that if there have to be exceptions with regard to the uniform scale they shall be as few as possible because of the undoubted difficulties which happen in estimating mileages when you take different scales on a continuous mileage. With regard to the South Wales instance, of which so much has been made, I think the matter should be left to take the suggestion of the Chairman that there should be a "minus" mileage rather than a variation in the scale, but very possibly a situation of that kind might be met by the quotation of train load rates in respect of which much of the coal in the South Wales district actually travels. As illustrating the difficulties in the question of calculating rates on a continuous mileage where you have different scales, I would mention that the Great Western Railway Company have for the information of their staff a rather voluminous scale showing the excess of

20 May, 1920.]

MR. GRANVILLE F. BILBOROUGH.

[Continued.]

mileage on scale 2 over scale 1. I believe in respect to this particular scale the excess mileage varies according to the distance from 550d. at 20 miles to 013d. at 200 miles. In respect of Class B where you have two different scales operating on a different mileage the effective is between .350d. at 20 miles and .065d. at 200 miles. As an instance of the difficulties with regard to Class A traffic I have prepared an illustration of how a Great Northern rate is arrived at on a continuous mileage on two different scales. From this illustration it will be seen that in order to obtain an accurate Class A rate between, say, Sleaford and Nottingham on the Great Northern, it is necessary to work out some mathematical calculations to four decimal places before you can get at the actual rate which is chargeable on a varying scale on a continuous mileage. Therefore the traders ask that as far as possible if you are going to have a continuous mileage it is very desirable to have at the same time, if possible, a continuous scale which will operate throughout the whole of the distance if you are to avoid the difficulties of calculating the rate at the present time. A remark was made by Sir John Simon in the course of his evidence, that if the traders wanted to obtain an accurate rate they could do so at the present time. He referred to the powers as they are epitomised in the Government publications. I would like to make a sporting offer to Sir John. If he will take that book and work out the rate from Oldhill in Staffordshire in Class A to Newport in one day—

2142. *Sir John Simon:* You have not mentioned the amount I am to get if I do it?—I think it ought to be done gratuitously.

2143. *Sir John Simon:* That would be a sporting offer?—In connection with the compilation of rates I should also like to ask the Committee to recommend that adequate scales of mileage shall be prepared and shall be available to the traders on payment. With regard to the cumulative principle there is general agreement, I think, and it requires no emphasis.

2144. *Mr. Jepson:* Will you explain this a little more? Is this is working out the maximum powers of the company?—Working out the maximum powers of the company when you have two different scales on a continuous mileage.

2145. A trader would only require to go through this elaborate calculation if he thought his rate was approaching or was above the maximum?—If you wish to test the rate that would be so.

2146. Do you suggest many traders have to go through this elaborate calculation in order to test the accuracy of their rates?—Very often they have to do so, that is, if they are capable of doing it. I wanted to submit to the Committee that, speaking generally, it is impossible for traders to actually arrive at the quantum of the rate that they are entitled to pay, and they are asking for some simplicity so that on the mileage with the scale before them they will have chapter and verse and can find the rate within a—

2147. *Mr. Acworth:* Hillingdon Junction to Nottingham is 19 miles?—19 miles 3 chains.

2148. That is one of the places where the Act of Parliament gives power to charge.—A higher scale?

2149. Yes. Suppose the ordinary scale is 1d.—roughly it is?—Yes.

2150. Your suggestion is that in the Book of Mileage Rates which might be introduced you should get rid of this high scale and should put it as a computed distance of 30 miles which would come to the same thing?—No, I do not think so. What the traders want to get rid of is the varying scale. It is a source of very great difficulty, and it is impossible to compute rates. On the Great Western system at the present time there are three different scales dealing alone with Class A traffic. The traffic may go by the whole of the three lines. It is difficult to find out where one line finishes and the other begins, and in respect to which portion of the line this particular scale applies, or where it does not. They are absolutely in the dark, and if they knew

the exact distances this method of applying mathematical calculations is a little bit too much.

2151. That is what I want to get at. This exceptional scale from Hillingdon Junction to Nottingham was allowed for some particular reason, expense of construction or something, in the year 1892. You are aware of that?—I take it that when the 1891 and 1892 orders were issued, in the estimation of the Committee, there was some adequate reason for fixing on different scales, what it was I cannot say.

2152. Sometimes it was done by allowing a special scale, and sometimes it was done by putting on a bonus mileage to certain points on the line which got higher powers of charge. You do not suggest it would be reasonable to sweep it away to-day, without inquiry?—There is one thing I cannot understand about it, that the highest scale on the Great Northern operates in the particular district where they have the most traffic. The highest scale operates in the West Riding of Yorkshire, and in Derbyshire and Nottinghamshire, which is where the whole of the coalfields are. On the particular portion of the line where there is very little traffic, the scale is .95; in the congested districts where they have all the traffic, and can therefore work it easily and conveniently, and in bulk, they are allowed 1.50.

2153. The reason probably was that in the old Act these high power lines had still higher powers, and the Committee cut them down something, but did not like to cut them down the whole way. Suppose there is a good case for it, if you strike out the exceptional charge per mile, would you agree that the simple plan is to say each mile is  $1\frac{1}{2}$  miles long, and treat it as a bonus mileage?—I should not think so. I should prefer to average it over the whole system, or the groups, if the groups should be brought into existence.

2154. Would you put up the scales a little bit all over the group to compensate for the big cutting down on special portions?—I think so, I should average them out.

2155. You would be prepared to put up all the scales a little, to compensate for sweeping away special high scales?—It is involved inevitably in the recommendations.

2156. You do not propose, heads I win, tails you lose?—No.

2157. I want to know how you propose to do it?

2158. *Mr. Jepson:* If you want to get the same amount of money, you must do it?—That is so. I think it is a perfectly equitable suggestion.

2159. *Mr. Acworth:* Perfectly, I am not blaming you, I am trying to get at what is in your mind?—With regard to the unit of traffic, it is the opinion of the Association that the unit of traffic should be that determined by existing practice, which is generally convenient. It is realised, however, that traffic in this country travels in smaller parcels than in America and Germany, and if it is desired to foster bulk loading, suitable graduations of the standard rates should be made to encourage an alteration. In Germany, for instance, the 10 ton rates are easily 30 per cent. lower than the odd lot rates, and perhaps something similar in this country might stimulate a modification in practice. It is asked that the graduations should represent proportionate figures, if that is possible, by percentage reductions, or by applying a lower classification scale in some instances, or an arrangement like the XYZ arrangement at the present time. In any event, it is asked that when these graded rates are fixed, or in any exceptional rates, the component services shall be regarded as being similarly reduced and (assuming merged rates) rebates given where (and if) necessary, on the "Pidgeon" principle. One of the witnesses, I believe, on behalf either of the Federation of British Industries or Associated Chambers of Commerce, urged that whatever the rate might be, the maximum terminals should be included in the rate. I think that is not according to the brief. So far as the Association of Chambers of Commerce is concerned, and the Federation of

20 May, 1920.]

MR. GRANVILLE F. BILDROUGH.

[Continued.]

British Industries, they are perfectly prepared to have exceptional rates analysed on what might be called the Pidecock principle, and applied *pro rata* to the whole of the services which may be included. I will now come to the question of short distance traffic. This Association, speaking generally, does not agree with the Short Distance Clause, especially as interpreted in the "Hamfurlong Case," to which reference was made by Sir Thomas this morning. As far as possible, we should like to see short mileage, especially when the short mileage is repeated over several portions of the journey, entirely abolished. If it is necessary to have any short mileage at all, one might recommend that the railway companies' scale should begin at three miles, or something of that kind, but the short mileage scale as it is understood at the present time, if the traffic passes over, say, six chains on any particular railway company, they can charge as six miles, we say is absolutely unfair and is putting burdens on some traders at the expense of others. Much has been said in respect of getting engines under steam to do two or three miles. So far as my experience goes, it is not an uncommon thing, as most of the short distance traffic is worked either on long distance trains in through and through traffic or from point to point by the ordinary services. There is no exceptional service except that of merely attaching and detaching. What is more, the short distance traffic has to pay the same terminals as the long distance traffic, and therefore a higher ratio in respect of those particular services. If there is any doubt on this phase, however, it is suggested that an increased charge in the first few miles might be made in the cumulative scales. In respect to terminals, this Association agrees with the recommendation that the existing practice should be the basis of future arrangements and that the charge should be a uniform one throughout the country. Reference should be made to the suggestion dropped during the discussion for grading terminal stations for "charging purposes." This seems impracticable. How would differentiation be made in two towns of equal size, one of which had three or four goods depots and the other only one? Or is the size and cost of a terminal any criterion of its traffic? Does not everything depend upon the trade transacted? As often happens, the more expensive shop can sell more cheaply than an ordinary trader. Uniformity, therefore, is desirable, but I should like to make this qualification. In respect to some of the country stations where, as a matter of fact, there are no terminal facilities of any kind afforded and where the traffic has to be taken off a siding instead of an elaborate station, some consideration should be shown in respect of such places. One of the points I have to make, which is of very great importance, is in respect of the cartage services. The question has been raised as to whether the traders want C and D rates or whether they want S to S rates or merely conveyance rates. I think it ought to be made clear the traders wish the whole of the services in any particular rate to be analysed, but where at the present time C and D rates are in operation the trader should have the same facility as he has at the present time, and the railway company should not be empowered to use the question of the cartage as a weapon of offence against the trader, and if he refuses to comply with any condition, threaten him with the removal of the service which they had previously afforded. Strictly speaking, they are very anxious to have a carted and delivered rate if they want it, but in any instance the rates should be plainly analysed upon the books, so that they shall know which particular service and the quantum of every rate in respect to each of the services which it may contain. If there has been, and is at the present time, a C and D rate on the books, it should be plainly indicated in any future books, so that the railway companies may be compelled to continue the same services that they are

giving at the present time, and not to use the weapon of the cartage in an oppressive manner.

2160. *Chairman*: Do you suggest the railway company should be obliged to render cartage services, but the trader should not be obliged to make use of them?—Yes, that is the exact position at the present time.

2161. At the present time, if the trader does not make use of them he none the less pays for them, or he gets a rebate, no doubt; he helps to maintain the cartage, stock, horses, wagons and so on?—That is so, and that is one of the main causes of the grievances at the present time, that the trader has not only to arrange for his own cartages, but has to help to pay for the maintenance of the railway company's material.

2162. He does not arrange this cartage if the company delivers?—If he prefers to deliver, I mean.

2163. It would be hardly fair that the railway company should be compelled to keep a complete stock of materials for delivering, and the traders might be free to make no use whatever, so that possibly the company would get one parcel a day to carry at a small station?—You would not apply that principle to any other firm. If I started it, a cartage business I should have to take the risk of the cartage, whatever it might be. I could not guarantee somebody would come to me.

2164. You would be at liberty to withdraw from the business if it did not pay. You prohibit them withdrawing if it is most unremunerative?—They could reduce the staff if it were necessary in accordance with the requirements for the staff. They are not forced to keep the same number of horses if there is half the traffic.

2165. Probably at big stations it would not arise, because there would be sufficient to keep a certain amount busy, but at a small country station the railway company might find that the traders, generally speaking, do not want them to cart their traffic?—Yes.

2166. Possibly one load a week they would call on the railway company to cart.

2167. *Mr. Davies*: Would not you admit this, if applied to the members of the Chambers of Commerce, would they have the power to intimate to their customers the next morning that they would have to pay an increase of 5 to 10 per cent. on the goods they require from your members?—Yes.

2168. Immediately?—It would be perfectly proper, too, within reason for railway companies to modify their charges in accordance with the variations in their requirements.

2169. Not in the direct way you can do it?—I should like to emphasise that point a great deal more, because if it were possible I should like the scales of charges which are to be made for cartage by the railway companies to be, if possible, scheduled at the same time. There may be slight variations in the cartage services through different parts of the country, but I think if the cartage service could be averaged out on the basis of a square mileage of the actual carting areas and a standard fixed, also subject to the tribunal, it would be by far the fairer arrangement. If the cartage service is going to be separated from the C and D rates, it is very easy to see that a very difficult position is likely to arise. The railway companies might not have the power to increase their maximum. You may say you fix the standard rate, but if you make the cartage optional on it they have every chance. They can say: So far as the conveyance is concerned it is not possible for us to increase the maximum, but in respect of the cartage we have an unlimited scope. We can charge 10s. or 20s. per ton for the service we have been previously doing for 5s., and recoup ourselves to any extent that we may think.

2170. *Chairman*: They would be always subject to the competition of the ordinary carrier?—The general carrier over vast portions of the country has almost been wiped out, and it will be years before there would be adequate competition from the general

20 May, 1920.]

MR. GRANVILLE F. BILBOROUGH.

[Continued.]

carrier to meet the services which the railway companies are doing and the exceptional facilities they might have.

2171. I have no doubt if the railways shut down in London suddenly it would take Pickfords a time to overtake the job?—I do not think it could be done.

2172. That is not a thing we need fear, the railway companies are not likely to shut down in a great town like that, but there are cartage facilities in every town and every village for carrying?—To some extent, but they could not compete with the railway companies.

2173. If the railway companies put up their cartage charges unreasonably, then Pickfords and those people of the neighbourhood would reap a handsome profit?—They would gradually begin to arrive, but it would be years before the situation regulated itself, and in the meantime the railway companies might be putting these traders to a very considerable inconvenience. I could illustrate this in a very easy manner. In the Birmingham and South Staffordshire District there are a large number of timber trades which included cartage previous to the War. Owing to the difficulties with regard to road transport, and things of that kind, the railway companies gave notice that although these timber rates included cartage "we do not propose to cart in future, but in place of the cartage we will allow you a rebate of 1s. per ton." The consequent result is that they throw the whole onus of an expensive cartage in some circumstances upon the trader and they recoup him to the extent of 1s. What is likely to happen throughout the country if the railway companies were suddenly at various places to make, or rather to extend that to Classes 1 to 5; an impossible situation would arise. I believe that so far as potatoes from East Anglia to London are concerned a similar arrangement was made. Leaving the question of cartage, I come to the question of private sidings. In the Birmingham District especially there has been a considerable amount of dissatisfaction with regard to the existing arrangements in respect of charges at private sidings. It is invariably found by the rates analyses that the chargeable rates, especially in exceptional figures, do not contain any terminal charges, although, as a matter of fact, the trader is aware that similar rates are in operation at the railway depot and full facilities afforded to other traders. It is also regarded as a convenient fiction that in exceptional rates, the whole of the abatement in the rate is said to be made from the terminals, although it is a matter of common knowledge that the terminals are the more costly of the railway services. Thus, the Rates Advisory Committee had to recommend a flat rate of 1s. per ton over the ordinary percentages, because they were convinced on the evidence that the terminal services were by far the more costly services, and therefore required exceptional treatment, but when the trader comes to have his rates analysed he finds there is none of this exceptional service for which they are extra rewarded in the chargeable rate. So far as the district represented by the Birmingham Chamber of Commerce is concerned, there are several siding owners who have built sidings on their own land and at their own expense and yet can secure no siding rebates, unless they are prepared to take the matter to the Commissioners and obtain judgment. As the costs, as has already been stated, at the Commissioners' Court are likely to be more than the capitalised value of the benefits that are likely to be derived, they do not go to the Court at all. In one particular case the railway company does not only pay no rebate on a siding built by the trader on his own land and maintained at his own cost, but additionally charge him 1s. 5d. per wagon for putting the wagons into the siding. In such circumstances the traders press for a separation of the component parts of a railway rate, and where it is a matter of fact that exceptional services are performed beyond those of mere conveyance, provision must be made for them, subject to appeal.

2174. *Chairman:* I see under the Compilation of Rate Books you point out again that they are to be allocated?—Yes.

2175. And then to be split and exceptional rules also, and you give an instance of the rate to London where the companies charge rates which estimated on the Pickcock principle, include terminals and cartage averaging between 10s. and 15s. a ton. The traffic is handed over to the Dock Company at a junction and no terminals actually performed. For the terminal services performed by the Dock authority, you believe the companies make them a commuted payment of something not exceeding 3s. 9d. per ton. I think that was brought to our knowledge before. Then you deal with export and import rates. You think it undesirable to give any preferences, as such. Though a general exception might be made in the case of export traffic. It is to be remembered that in Germany there is a German Ausnahme tariff for export traffic. Is it not possible to make a somewhat similar arrangement in this country, on the express condition that it shall not be granted in reverse direction to import traffic? That is much what the last witness told us. Then you call attention to the shortest route and say it is of the utmost importance to traders, and some of the points have not been brought into the discussion up to the present. Mr. Acworth said it was the present practice and the chief object of the allocation schemes. This is probably true, so long as rates are as now applied competitively on the short mileage, but if the railway companies are empowered to charge on the actual distance carried, it will be in their future interest to haul by circuitous routes exactly as they insist upon doing now to obtain the longer haul over their own system.

With regard to the allocation schemes, you would repeat the evidence of the Federation of British Industries and say that the arrangements are costing the traders and the railway companies thousands of pounds in extra cartage by forcing the traffic to depots remote from the premises of the traders, and you could give instances?—I should like to give instances with regard to that particular traffic. You take traffic from Birmingham and South Staffordshire to Leeds. It is now allocated to the London and North Western Railway Company, although the Midland can carry the traffic with equal convenience, and the mileage is scarcely different at all. As a result the whole of the iron and steel traffic which previously went to the Hunslet district, which is contiguous with the Midland Depot, is now taken to the Wallington Street Depot, and if the traders wish to cart the traffic, they have to cart a mile or two further than they would have done otherwise. The consequent result is that they say to the railway company, if you put us under this extra cartage you must do the work, and so the railway companies are compelled to cart an extra distance. The result is that their costs and expenses go up.

2176. That ought to be a good check to prevent the railway company doing it again?—I think that the facilities of 1854 should be restored to the traders, and it should be made perfectly clear that the railway companies should give all facilities, and if traffic is especially required at any special depot it should be sent to that depot where there is a route open and there are facilities for forwarding.

2177. Then with regard to alternative routes you say the question is equally important. For instance, suppose that two railways, Midland and London and North Western, run between A and B, one route being 20 and the other 30 miles. At destination, two traders have sidings. One connected with Midland, the other with London and North Western, necessitating the traffic travelling by the different systems. It is urged that the chargeable rate should be the same in each case, the distance being taken by the shorter route?—That is so.

2178. I remember we have had it pressed upon us?—I have an instance here which a firm asked me to bring before your notice of traffic to Whiston Station, just outside Birmingham. It is in the cartage boundary as a matter of fact, and just previous to the War there was no difficulty with regard to this parti-

20 May, 1920.]

MR. GRANVILLE F. BILBOROUGH.

[Continued.]

cular traffic, it was forwarded by both railway companies at the same rates. Since the modifications have been made all the rates to Whiston Station have now to be compiled separately and upon a separate basis. Certain traffic here is coming from Bristol. Previously it travelled to Birmingham at a rate of 23s. 6d. a ton; now under the new arrangements it is costing 33s. 4d. for the same particular traffic. The firm are therefore losing almost 10s. a ton, because the shorter route is not applied.

2179. *Mr. Jepson*: I suppose they have taken that up with the railway company concerned?—They have taken it up with the railway company, and the railway company at the present time are saying that each of these cases is being considered on its merits and each rate has been fixed separately, and there is probably no possibility of the same rates being applied, although they were previously.

*Chairman*: You have already dealt with conditions as to liability of the owners' rate and company's rate and with packing, and you were good enough to copy out the clauses you read from the Report. Then as to the Carriers' Act you have been requested to draw attention to the provisions in the Carriers' Act exempting the companies from liability for loss in respect of insurable traffic not declared when the value exceeds £10.

*Mr. Acworth*: The same as the previous witness.

2180. *Chairman*: So with regard to traffic in Part 4. I think you have dealt with that?—Yes.

2181. *Traders'* wagons I do not think you have. Suggestions were asked by the Chairman for alteration in the general conditions of the Rates and Charges Orders Confirmation Acts. You would like to mention the question of traders' wagons and means for increasing their utility. First, it is desirable to modify No. 2 (b) to the extent of allowing wagons used in mineral service being used on the return journey for merchandise traffic when practicable, for work between different departments of a firm's establishment separated by a short railway transit, and in such cases a specific scale of allowances should be adopted from the conveyance rate for the provision of vehicles. Then with regard to the demurrage regulations, some effort is necessary to approximate the charges for undue detention as between the railway vehicles and those of the trader. At present the trader has little redress, and though his wagons may be detained for weeks he cannot secure any advantages under Condition 6, except by expensive processes out of proportion with any benefits to be derived thereby. Condition 23 should make it clear that all traders' trucks and tanks are to be returned free. At present, the railways argue that the provision is to be interpreted by Condition 2 m and that where oils and chemicals, &c., are conveyed in tank wagons, the free return is a justification for a high rate. I see the point and we must consider it carefully. With demurrage you want to have as quick a process of getting at the railway company as they have at you?—Yes, on the same terms if it were possible. There is a further question with regard to demurrage I should like to mention and that is the question of demurrage *en route*. As you will be aware at the present time, the railway companies are charging demurrage *en route*.

2182. *Chairman*: That has been explained to us once or twice. It only means that it is due to the trader not being able to take the goods; if it is their delay they have not the impudence to charge it?—That is not the fact. There is a large volume of traffic going to the London Docks which owing to congestion at the docks it is impossible for the docks to receive. It may be held up for any reason; the trader has absolutely no control over it; he knows nothing about the congestion at the docks, and the railway company say they can accept the traffic, and when they do it may be held up two or three days, but they present the trader with a bill for the amount of the demurrage. I should like to point out that it is contrary to the statutory powers of the railway companies in accordance with General Condition 6 of the Rates and Charges Orders, which

specifically says that what the companies may charge for is—

2183. *Mr. Jepson*: What page is it?—Page 98, Clause 4. They may charge for the detention of trucks or the use or occupation of any such accommodation before or after conveyance. I submit that they cannot charge demurrage for any trucks which are in the process of conveyance if it is not the fault of the traders.

2184. *Sir John Simon*: First of all I should like to do a little business with the gentleman. He has been good enough to point out paragraph 113 of the Departmental Committee's Report of 1911. Mr. Russell Rea's Committee made this observation, "Certain articles if sent insufficiently protected by packing will only be accepted by the companies at owner's risk, ordinary rates being charged. While it is obviously fair that if the companies carry articles unpacked which they might reasonably require to be packed, they should not be held liable for any damage arising from the fact that the articles are unpacked, we fail to see why this circumstance justifies them in escaping liability for delay or misdelivery or damage due to other causes. We therefore think that in such cases the company should not absolve themselves from liability except that which arises in consequence of the goods being unpacked." You were kind enough to call attention to that?—Yes.

2185. It does not seem a very unreasonable observation, I am bound to say. I have been looking at the consignment note for goods not properly protected by packing, and I see as things stand you are quite right. The terms are that the company is relieved from liability except upon proof that the loss or injury arises from wilful misconduct. Do I understand what you suggest, founding yourselves on Mr. Russell Rea's Committee, is this, that the company, while it is entitled to limit its liability in certain cases, should only stipulate that they are not to be liable for loss or damage due to the goods not being protected by packing?—I am willing to concede that except for the wilful misconduct provision.

2186. I think myself and those advising me are disposed to agree that the companies ought to consider very carefully whether they cannot put in in the case of the consignment note for damageable goods the qualifying words, that the loss or damage they are not responsible for is the loss or damage due to the goods not being properly protected by packing.

*Chairman*: I must say that seems to me reasonable.

2187. *Sir John Simon*: I am prepared to do business with you on those terms, if that is what you mean?—I shall take that as a big step ahead.

2188. I think you will find that we can make that concession. I do not expect to get any advantage from it, except that so far we may be able to agree I should think it cannot do you any harm that the company take upon themselves the responsibility for loss or damage, even if it is due to the goods not being properly protected by packing on proof that the loss or damage arises from wilful misconduct of the company's servants.

*Chairman*: Is that in?

*Sir John Simon*: Do not you want it in? I do not seek to cut it out, but I will cut it out if you do not like it?—I do not want it cut out.

2189. I hope we are agreed about that?—I do not know the exact wording of it straight off.

2190. That is quite fair. You will not suppose that I want to bind you, but I wanted to make that suggestion, because it is a useful observation you have made and the goods managers feel the force of it and we think we could do it. I do not know that it is the same about the other thing, I do not think you have read the words of the paragraph which follows in Mr. Russell Rea's report quite completely. You will see that paragraph 114 deals with things which are dangerous or inflammable, and what the Committee said was "It may be reasonable that they should refuse to carry such goods, unless the

20 May, 1920.]

MR. GRANVILLE F. BILBOROUGH.

[Continued.]

trader agrees to exempt them from liability to compensate in respect of accidents occurring in consequence of the nature of the goods, but we think that if they carry such goods they should not deprive the trader of an opportunity of sending them on terms under which the companies would be responsible for loss or damage occurring as a result of their own negligence and not in consequence of the nature of the goods." Surely that means, does it not, that Mr. Russell Rea's Committee was suggesting that there ought to be an alternative rate and an alternative set of conditions?—Yes.

2191. I agree?—If a fair scale can be provided with the alternative rate I am sure the traders will not object. At the present time they have not fair rates with regard to this traffic and they have not alternative.

2192. You must not take me to be agreeing about that. I follow your point, if it is that you are suggesting there should be an alternative. I think we can leave that. Then you made what I called a sporting offer just now. Have you your complicated table which you say is worked out to four places of decimals about the Great Northern excess yield, Sleaford to Nottingham. You remember the sum, it has a most formidable aspect. I will make you a sporting offer. How would you like to see the whole sum done with four figures?—Yes.

2193. Now just see. Sleaford to Nottingham is 14 miles and 51 chains, that is 14½. That is one figure. Mr. Jepson: Sleaford to Hallingdon, you mean.

2194. Sir John Simon: Yes. The rate is .95 of a penny a mile, is it not?—Yes.

2195. Suppose we multiply one by the other, it would give 1s. 2d., and if you want to be very precise, .01 of a penny. There are two things. I had multiplied one by the other. Now take the other part. Hallingdon to Nottingham is 19 miles 3 chains, that is 19½; that is the third figure, and the rate there is you call it 1.50001 of a penny. Do you mind if I call it 1½d.?—No.

2196. How much is 19½ times 1½d.? I am sure you can do that in your head. It is 2s. 48½d., if you want to be very precise, .875. Perhaps you might add those together. The charge is 2s. 68½d. If you pay 3s. 7d. that is all you have to pay. There is not anything very elaborate about that?—No, not in this particular case.

2197. I thought you took this as an illustration how to work it out without four places of decimals?—That is the illustration how they have to be worked out.

2198. It is not?—As a matter of fact this one comes the same worked on both scales, but there are plenty which come out differently worked on the other scale.

2199. You cannot have it simpler than that. Now I want to put a question to you on a more general point, which it is important to get before the Committee. You speak with great authority, and very candidly and fairly, if I may say so. You have been commenting, for instance, on cartage charges and alternative charges between owners' risk rates or companies' risk rates. Suppose the railway company has got two rates, the higher rate which is the company's risk rate and the lower rate which is the owner's risk rate, between the same points. Of course, the trader properly will choose the rate which suits him best?—Yes.

2200. He ought to do so, and of course the railway company had no complaint. That is what he will try to do, will he not?—Yes.

2201. If the trader finds by experience or thinks he knows that the discount the railway company gives him off the full charge is really more than the risk he will run by taking the risk on his own shoulders, he will choose the owners' risk rate, and if he thinks it is the other way he will send it by the companies' risk rate naturally?—Yes.

2202. That is quite right; do not understand me to complain, but it is plain, is it not, that in settling a claim on rates, whatever this Committee ultimately does, we must remember that there is always working that selective process by which the trader is

endeavouring to choose the best of two rates for him. That is fair, is it not?—Yes.

2203. What really happens is, is it not, that the railway company, the statutory carrier, has to give you whichever of the two you choose, there is always a tendency to put on the railway company the worst risk and to take the better risk on your own shoulders? Is not that fair? Do not think I am complaining, is must be so, do not you think so?—I do not quite see the worst risk.

2204. Let me give you an illustration.—I take it that will be perfectly equitable both ways.

2205. The thing is this: the railway company has to quote charges which are charges which will be charged indifferently to anybody who comes along who is tendering the same commodity, and it may often happen that as a matter of fact one bargain is a better bargain and another bargain a worse bargain for the railway company, and the person who has the best opportunity of judging that over a series of years is the trader, is it not?—Yes.

2206. That is my point. I do not know whether it is within your experience that there are keen people in Birmingham. Have you ever heard of a trader who sends rather damageable stuff or dangerous stuff, and he chooses to send it by owner's risk, and insures at Lloyd's for less than the difference between the two rates? Have you ever heard of that? In Birmingham there are up-to-date people?—I do not quite appreciate that.

2207. I should think that you did. Anyhow, all I want to bring out is this: the Committee will see that is a consideration that has to be borne in mind in settling the quantum of the rates.

Chairman: The average rate is not a fair insurance, because the man in the biggest danger insures and the man in the small danger does not insure.

2208. Sir John Simon: That is the position of a statutory carrier. I will take the one other illustration. I think you dealt very fairly with this. Take cartage, it is the case that the railway company, if it has a cartage service, will cart for a given charge inside a very considerable area?—Quite so.

2209. Probably at so much a ton, usually by weight, is it not?—Generally.

2210. That is a common charge, whatever it is, 2s. 6d. or 3s. 6d., whatever it may be, within an area of some miles. Is it not obvious that the traders that are near to the railway station will always attend to doing their own carting and the people that have a long haul will say, that is the railway company's job?—I know that the railway companies won the Pickford case on that argument, but it is not absolutely true. Of course in the bulk of the towns there is not one railway station in the centre with increasing radii, but the railway stations are up and down the area.

2211. It is subject to this important qualification, where there are several alternative places from which you can send the goods, the railway companies, like other people, always try to get the shortest haul. I think we had a gentleman here from the biscuit trade the other day. Would it surprise you to learn that when a biscuit manufacturer is sending boxes that are full of biscuits by train he very often carts the full boxes to the railway station? If it is a matter of carrying a van full of empties, which I daresay only weighs ½ ton, then that is the railway company's job. Are you surprised to hear that?—No, I am not surprised at all.

2212. That is business?—Quite.

2213. Please understand the railway companies do not complain one little bit, but what they say is that when the charges are fixed we must remember these little things. That is all I am suggesting?—And the traders are perfectly agreeable that they should be considered.

2214. I am sure they are. Do not think I am complaining at all, but I wanted to bring that point out, because it is a most important matter.

Chairman: It is a most important matter for us to bear in mind.

20 May, 1920.]

MR. GRANVILLE F. BILBROUGH.

[Continued.]

2215. *Sir John Simon*: I was not clear whether this gentleman wished us to understand that the railway companies ought to be under a statutory obligation to cart. Is that your view?—I should like them to be under equal obligations to the obligations they have at the present time. They are under no statutory obligations now, but they are under obligation now to render facilities, because the cartage charge is included in the rate, and they cannot withdraw the rate.

2216. We will not spend time talking about law. I know you know the subject well. The railway company can be compelled under the name of a reasonable facility to cart?—They cannot withdraw the rates wholesale.

2217. They have to give facilities, if it is there, to all alike. Do you think a statutory railway company which has this iron way laid down, ought to be under a statutory liability to cart?—I think it should give the existing facilities, and they should not be curtailed. They should be increased if possible.

*Chairman*: I understand Mr. Bilbrough to say, if they cart at the present time, they should be compelled to cart in future.

*Sir John Simon*: I am sorry if I have delayed you.

*Chairman*: Not at all.

*Mr. Balfour Browne*: I have handed to my learned friend the two draft Clauses, and I will hand them to you.

(For draft Clauses, see Appendix.)

(Adjourned till Tuesday, June 1st, at 11 a.m.)

## APPENDIX.

Any railway company desiring to bring into operation an increase in any rate shall give notice of its intention (a) by a written notice to the secretary of the tribunal, and (b) by advertisement in the "London Gazette," giving particulars of the proposed increase and of the date when it is proposed that the same shall be brought into force, not being less than two months from the date when such notice is given, and if no notice of objection is given by a party entitled to object as herein defined, (a) to the tribunal, and (b) to the railway company proposing the increase, within two months after the appearance of the said advertisement in the "London Gazette." The said increase shall become operative as from the date named by the railway company, but if any such notice of objection is given the said increase shall not take effect unless and until the same shall have been approved by the tribunal; but so also that where any increase in a rate shall have become operative without the express approval of the tribunal, it shall be lawful for any trader affected or for any person or body who would have been entitled to object to appeal against the said increase, and in such case the tribunal shall hear such appeal, and may determine whether any, and, if so, what, increase shall be allowed, and the base of disallowing or reducing the said increase, may direct as from what date such disallowance or reduction shall take effect.

Provided always that where any railway company desires to bring into operation an increase in any rate without delay, notice may be given by such

company (a) by a writing left with the secretary of the tribunal, and (b) by an advertisement in the "London Gazette" notifying particulars of the proposed increase and of the date when it is desired to bring the same into force, and it shall be the duty of the tribunal forthwith to give notice to such representative bodies as it shall consider best fitted to represent the traders affected and to the railway company of a place and time not being later than 30 days after the receipt of the notice when the proposal will be considered, and each of such bodies and the railway company shall be entitled to be heard upon the question of whether such increase shall be brought into operation at once or after some and what interval, and, after such hearing, the tribunal may direct either that the proposed increase shall provisionally come into operation at once or after such interval as it may determine, or may postpone its decision as to the coming into force of the said increase until after such further hearing, public or otherwise, as the tribunal shall think fit. A direction that a rate shall provisionally come into operation shall be without prejudice to the further hearing and determination of the question whether the said increase shall be allowed. If any increase shall be brought into operation by direction of the tribunal, but shall not subsequently be confirmed, any moneys paid by traders in respect of so much of the increase in the rate as shall not be confirmed shall be repayable by the railway company receiving the same to the person who has paid the same.

(Draft handed in by Mr. Balfour Browne.)

18th May, 1920.

### OWNER'S RISK CLAUSE.

Where a railway company, either alone or jointly with any other railway company, undertake to carry, convey and deliver by railway, or by railway and canal or road, any goods at a rate of less amount than the ordinary or company's risk rate, in consideration of the company or any other company or person over whose railway or canal such goods may pass being relieved of any of their liabilities as carriers or conveyors of such goods, it shall not be lawful for the company by means of any conditions contained in a special contract for the carriage, conveyance and delivery of the goods, or any public or other notice, or otherwise, to relieve the company or any

such other company or person of liability for loss arising from theft or pilferage by the servants of the company or others, or their wilful misconduct, or the failure or neglect of the company or any such other company or person to carry or convey and deliver the goods with all reasonable care and expedition; but the company, and in respect of the carriage or conveyance and delivery of the goods over any part of their railway or canal, each such other company or person, shall remain liable for such loss; and where any loss arises it shall lie upon the company to prove that the same was not caused by such theft or pilferage, misconduct, or failure or neglect as aforesaid.

The term "goods" in this clause includes merchandise, minerals and animals, and all other articles and things of every description.

18th May, 1920.

COMPANY'S RISK CLAUSE.

Where a railway company, either alone or jointly with any other railway company, in consideration of the payment of an ordinary or company's risk rate, undertake to carry or convey by railway, or by railway and canal or road, any goods, the company shall be deemed to be insurers of, and shall be liable for, the loss, however caused, of the whole or any part of, or any injury done to such goods in the receiving, forwarding, and delivering thereof, and for any and every other loss or injury arising directly out of such receiving, forwarding and delivery which the owner of such goods may sustain, excepting only such loss or injury as may arise from the act of God or the King's enemies, or the inherent vice or natural deterioration of such goods.

Provided that where loss arises from the act of God or the inherent vice in or natural deterioration

of the goods, and the company have failed to prove that they have used all reasonable foresight and care by the exercise whereof such loss could have been prevented, the company shall not be relieved from liability for such loss by reason of the occasion thereof.

The term "goods" in this clause includes merchandise, minerals and animals, and all other articles and things of every description.

*Note.*—The above clause is submitted subject to the Carriers Act, 1830, being amended so as to remove ambiguities and bring it in accordance with modern requirements. The clause is intended to impose upon the company the liability of a common carrier for loss or damage, and also liability for every other loss or injury which the owner of the goods may directly suffer, *e.g.*, loss from misdelivery or detention.



